(16,434.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 655.

ALBERT F. HOLDEN, PLAINTIFF IN ERROR,

vs.

HARVY HARDY, SHERIFF OF SALT LAKE COUNTY, IN THE STATE OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1896.

a In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant.

On *habeas corpus.*

Transcript in Mine Case.

1 STATE OF UTAH,
County of Salt Lake.

In the Justice's Court of the First Precinct, Salt Lake City.

Before W. H. Sells, justice of peace.

THE STATE OF UTAH
vs.
A. F. HOLDEN, Defendant.

Complaint.

On this twentieth day of June, A. D. one thousand, eight hundred and ninety-six, before me, W. H. Sells, justice of the peace within and for the first precinct of Salt Lake City, Salt Lake county, State of Utah, personally appeared C. O. Whittemore, county and prosecuting attorney for the county of Salt Lake, in the State of Utah, in his official capacity, and in the name and by the authority of the State of Utah, informs the court upon his oath that the said defendant, Albert F. Holden, on the 6th day of June, A. D. 1896, at the county of Salt Lake, State of Utah, unlawfully did employ one John Anderson to work and labor as a miner in the underground workings of the Old Jordan mine, in Bingham canyon, in the county aforesaid, for the period of ten hours each day, and said defendant, on the date aforesaid and continuously since said time, has unlawfully required said John Anderson, under and by virtue of said employment, to work and labor in the underground workings of the mine aforesaid for the period of ten hours each day, and that said employment was not in case of an emergency or where life or property was in imminent danger, contrary to the provisions of the statute of the State aforesaid, and against the peace and dignity of the State of Utah.

C. O. WHITTEMORE,
County Attorney.

Subscribed and sworn to before me the day and year first above written.

W. H. SELLS,
Justice of the Peace.

2 (Title of Court and Cause.)

Warrant of Arrest.

The State of Utah to the sheriff, constable, or any policeman of Salt Lake county, State of Utah, Greeting:

A complaint, upon oath, having been this day made before me, W. H. Sells, a justice of the peace, within and for the first precinct, Salt Lake City, county of Salt Lake, State of Utah, by C. O. Whittemore, county attorney, that the offense of violating the eight-hour law, the same being chapter 72 of the Laws of the State of Utah has been committed, and accusing Albert F. Holden thereof:

You are therefore commanded forthwith to arrest the above-named Albert F. Holden and bring him before me, forthwith, at my office in said precinct and county, or, in case of my absence or inability to act, before the nearest and most accessible magistrate in this county, to answer to the charge preferred against him.

Witness my hand at Salt Lake City, in said county, this 22nd day of June, 1896.

(Signed) W. H. SELLS,
Justice of the Peace.

STATE OF UTAH, }
County of Salt Lake, } ss:

I hereby certify that I received the within warrant on the 22nd day of June, A. D. 1896, and served the same by arresting the within-named defendant Albert F. Holden, and bringing him into court this 22nd day of June, A. D. 1896.

(Signed) HARVEY HARDY, *Sheriff,*
Per JOHN MONTGOMERY, JR.,
Deputy Sheriff.

Fees, $2.00.

3 (Title of Court and Cause.)

And now comes the defendant and for a plea to the complaint herein, says he is not guilty in manner and form as charged.

And for a further plea the said defendant, and admitting that at the time and place alleged he employed the said John Anderson for the hours per day, and for the work and in the mine alleged, and that the said John Anderson has since worked in pursuance of said employment, says he is not guilty because he is a native-born citizen of the United States, residing in the State of Utah, that the said John Anderson voluntarily engaged his services for the hours per day alleged, and that the facts charged do not constitute a crime, because the act of the legislature of the State of Utah, which creates and defines the supposed offense, and is known as chapter LXXII of the laws of the State of Utah, approved March 30th, 1896, is repugnant to the Constitution of the United States, and especially to that part of said Constitution known as the XIV amendment, and that the said act of the legislature of the State of Utah, is void,

and repugnant to and in violation of the Constitution of the United States in these respects:

It deprives the defendant and all employers and employees of the right to make contracts in a lawful way and for lawful purposes.

It is class legislation and not equal or uniform in its provisions.

It deprives the defendant and employers and employees of the equal protection of the laws, abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law.

THOS. MARSHALL,
W. H. DICKSON,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Defendant.

4 (Title of Court and Cause.)

Copies of Entries in Justice's Docket.

Filed affidavit of C. O. Whittemore this 20th day of June, 1896, charging defendant with the crime of violating the eight-hour law. Warrant of arrest issued on the 22d day of June, 1896, and thereafter warrant returned on the 22d day of June, 1896. Defendant appeared on the 22d day of June, 1896, and entered plea of not guilty. Case set for trial on the 25th day of June, 1896, 9 a. m. Defendant admitted to bail in the sum of his own recognizance. Plea of defendant filed.

Case tried on the 25th day of June, 1896, before the court, and the people were represented by C. O. Whittemore, attorney, and the defendant by Bennett, Harkness, Howat & Bradley, attorneys. Witnesses sworn and examined on the part of the people *were* Albert F. Holden.

Now, on this 25th day of June, 1896, at 9 o'clock a. m., this cause coming on to be heard, and The State, the plaintiff herein, appearing by C. O. Whittemore, county attorney, and Frederick Garfield Waite, and the defendant appearing in person and by Messrs. Bennett, Harkness, Howat & Bradley, his attorneys, and the court having heard the evidence in the case and being fully advised in the premises, doth find that the defendant is guilty as charged in the complaint herein.

It is therefore ordered and adjudged by the court, that the defendant is guilty of a misdemeanor as charged in the complaint herein in violating the provisions of chapter 72 of the Laws of the State of Utah of 1896, approved March 30th, 1896, and now in force.

And it is therefore further ordered and adjudged that said defendant pay a fine of fifty dollars ($50) and the costs of this suit taxed at seven and $\frac{80}{100}$ dollars ($7.80), and that the defendant be imprisoned in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven (57) days, or until said fine and costs be paid, if they be sooner paid, or until so much of said fine and costs

be paid as shall remain due and unpaid after deducting from said fine and costs the amount represented by each day of said confinement at hard labor at the rate of one dollar per day, or until the same be secured to be paid as provided by law.

5 (Title of Court and Cause.)

Commitment.

The State of Utah to the sheriff of Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing John Anderson to work and labor as a miner in the underground workings of the Old Jordan mine in Bingham cañon, Salt Lake county, Utah, for a period of ten hours each day, contrary to the provisions of chapter LXXII of the Laws of 1896 of the State of Utah, said crime having been committed within the limits of Salt Lake county, and State of Utah, on the 6th day of June, A. D. 1896, contrary to the statutes of said State of Utah in such case made and provided; and,

Whereas, the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50) and costs taxed at seven and $\frac{80}{100}$ dollars ($7.80) and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days, or until said fine and costs be fully paid, if it be sooner paid; and,

Whereas, said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom;

Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days, or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars ($57.80) be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

6 STATE OF UTAH, }
County of Salt Lake. }

To the honorable the supreme court of the State of Utah:

The petition of Albert F. Holden respectfully shows: That he is a native-born citizen of the United States and a citizen of the State of Utah, residing in the city and county of Salt Lake.

That he is imprisoned and restrained in his liberty by Harvey Hardy, acting as sheriff of the county of Salt Lake in said State of Utah, and is in the custody of said sheriff.

That the cause of his imprisonment is as follows:

That on or about the 20th day of June, 1896, C. O. Whittemore, county attorney for said Salt Lake county, filed in the justice's court of the first precinct for said city of Salt Lake and before W. H. Sells, Esq., the justice of the peace of said precinct, a complaint against your petitioner for a violation of chapter LXXII of the Laws of the Legislature of the State of Utah by the employment for more than eight hours per day of John Anderson, a copy of which complaint is annexed and made a part hereof. That a warrant was issued, your petitioner arrested, and a copy of the warrant and return thereon, is annexed and made a part of this petition.

That your petitioner filed pleas to said complaint, a copy of which is annexed as a part of this petition.

That afterward, on the 25th day of June, 1896 the cause was heard in said court and your petitioner adjudged guilty as charged, and adjudged to pay a fine of fifty dollars and in default of payment to be imprisoned in the county jail of Salt Lake county, Utah.

A copy of the docket and proceedings before said court is annexed and make a part hereof.

That in default of payment, a warrant of commitment was issued by said justice from said court, and delivered to the sheriff of said county, who arrested and holds your petitioner in actual custody on said warrant of commitment, a copy of which is annexed and made a part hereof.

And on information and belief, your petitioner alleges that
7 no other or further cause exists for the imprisonment of your petitioner.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued returnable in the supreme court of the State of Utah, that your petitioner be dischared from his imprisonment and that such relief may be granted as the case requires.

ALBERT F. HOLDEN, *Petitioner.*

STATE OF UTAH,
County of Salt Lake, } *ss:*

Albert F. Holden, being duly sworn, says: I am the petitioner named in the foregoing petition, and said petition is true of my own knowledge, except as to matters stated therein on information and belief, and as to those matters I believe it to be true.

—— ——.

Subscribed and sworn to before me, June 29, 1896.

C. E. STANTON, *County Clerk,*
[SEAL.] By FRED. W. DENNIS, *Deputy.*

STATE OF UTAH,
County of Salt Lake, } ss:

STATE OF UTAH
vs.
ALBERT F. HOLDEN.

On the annexed petition of Albert F. Holden a writ of *habeas corpus* is allowed, returnable before the supreme court of the State of Utah, at 10 o'clock a. m. on the 14th day of September, 1896, at the court-room in Salt Lake City, Utah, and J. H. Miller is appointed to serve said writ.

C. S. ZANE,
Chief Justice Supreme Court, Utah.

STATE OF UTAH,
County of Salt Lake, } ss:

Harvey Hardy, sheriff of the county of Salt Lake, State of Utah:

You are commanded to have the body of Albert F. Holden, by you detained as it is alleged, before the supreme court of the State of Utah, at the supreme court room in the city and county building in Salt Lake City, Salt Lake county, State of Utah, at 10 o'clock a. m. on the 29th day of June, A. D. 1896, to be dealt with according to law, and to abide such order as the court or judge thereof shall make in the premises and have with you then and there this writ, with a return of your doings in the premises.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

8 STATE OF UTAH,
Salt Lake County, } ss:

J. H. Miller, being duly sworn, says that on the 1st day of July, 1896, he served the original writ, of which the foregoing is a true copy, by leaving said original writ with John Montgomery, Jr., a deputy sheriff of said county, the person holding and detaining said Albert F. Holden in custody, the said Harvey Hardy being sick and confined to his house and not having said Albert F. Holden in custody.

J. H. MILLER.

[SEAL.] Subscribed and sworn to before me by said J. H. Miller this 1st day of August, 1896.

WM. M. BRADLEY,
Notary Public, Salt Lake County, Utah.

It is stipulated that the foregoing is a full and complete transcript of the record and proceedings in this case, including the proceedings in the justice's court, and is a full transcript of the case for hearing in this court, except the sheriff's return to the writ, which, when made, may be added to the transcript as a part thereof.

——— ———,
Attorneys for the State.

——— ———,
Attorneys for Petitioner.

8¼ In the Supreme Court of the State of Utah.

STATE OF UTAH
v.
ALBERT F. HOLDEN. } Return on *Habeas Corpus.*

To the hon. the supreme court of the State of Utah and to the judges of said court:

The undersigned, sheriff of Salt Lake county, State of Utah, for answer and return to the petition and writ of *habeas corpus* herein respectfully states—

That on the 1st day of July, 1896, the writ was personally served by me, in the city and county of Salt Lake, State of Utah, and I annex as part of my return the writ as served.

At the time of service I had the said Albert F. Holden in my custody, as such sheriff.

That the cause and ground of his detention is as follows:

A commitment dated the 25th day of June, 1896, issued and delivered to by W. H. Sells, Esq., a justice of the peace of the first precinct, in said Salt Lake City, and in pursuance of shich I arrested and detained the said Albert F. Holden. I attach a full, true, and correct copy of said commitment as part of my return.

The execution of said commitment by me is the sole cause of the arrest and detention of said Holden.

By direction of the court I released the said Albert F. Holden on recognizance until the further order of the court.

Respectfully submitted.

HARVEY HARDY,
Sheriff Salt Lake County,
By JOHN MONTGOMERY, JR.,
Deputy Sheriff.

8½ In the Justice Court of the First Precinct, Salt Lake City, County of Salt Lake, State of Utah.

THE STATE OF UTAH
vs.
ALBERT F. HOLDEN, Defendant. } Commitment.

The State of Utah to the sheriff of said Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing one William Hooley to work and labor in a certain concentrating mill in Salt Lake county, Utah, for a period of twelve hours each day, contrary to the provisions of chapter 72 of the Laws of 1896 of said State of Utah, said crime having been committed within the limits of Salt Lake county and State of Utah on the 6th day of June, A. D. 1896,

contrary to the statutes of said State of Utah in such case made and provided; and

Whereas the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50.00) and costs, taxed at seven and $\frac{80}{100}$ dollars ($7.80), and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days or until said
8½ fine and costs be fully paid; and

Whereas said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom:

Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden, and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars ($57.80) be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

Marked: In the justice court of the first precinct, Salt Lake City, Utah. Title of court and cause. Sheriff's return. Filed in supreme court, Sept. 14th, 1896. L. P. Palmer, clerk supreme court of Utah.

9 In the Supreme Court of the State of Utah, Regular September Term.

SEPTEMBER 17, 1896.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant.

This cause, coming on regularly to be heard, was argued by Thomas Marshall and Robert Harkness, for the petitioner, and by C. S. Varian and O. W. Powers, in reply, was submitted, and by the court taken under advisement.

Title of Court and Cause.

OCTOBER 29TH, 1896.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the discharge of the petitioner be, and the same is hereby, denied and he is remanded to the custody of the sheriff named until discharged according to law.

Dated October 29, 1896.

10 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN
v.
HARVEY HARDY, Sheriff.

ZANE, *C. J.:*

The plaintiff was found guilty of a misdemeanor by a justice of the peace, who assessed a fine against him of $50.00, and, upon a refusal to pay, committed him. To obtain his liberty he has presented this petition for a writ of *habeas corpus.*

The offence charged consisted of employing one William Hooley in underground mining more than eight hours per day, in violation of a law entitled "An act regulating the hours of employment in underground mines and in smelters and ore reduction works," as follows:

"SECTION —. The period of employment of workingmen in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is is imminent danger.

SECTION 2. The period of employment of workingmen in smelters, and all other institutions for the reduction or refining of ores or metals shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SECTION 3. Any person, body corporate, agent, manage- or
11 employer, who shall violate any of the provisions of section- 1 and 2 of this act, shall be deemed guilty of a misdemeanor."

This statute limits the hours of employment of laboring men in underground mines and smelters or other works for the reduction of ores or refining of metals to eight hours per day.

The question for our consideration and decision is, Had the legislature the power to enact this law?

Article 16 of the constitution of this State is as follows (Laws 1896, page 219):

"SECTION 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the State.

SEC. 2. The legislature shall provide by law, for a board of labor, conciliation, and arbitration which shall fairly represent the interests of both capital and labor. The board shall perform duties, and receive compensation as prescribed by law.

SEC. 3. The legislature shall prohibit:

1. The employment of women, or of children under the age of fourteen years in underground mines.

2. The contracting of convict labor.

3. The labor of convicts outside prison grounds, except on public works under the direct control of the State.

4. The political and commercial control of employés.

SEC. 4. The exchange of black-lists by railroad companies, or other corporations, associations or persons is prohibited.

SEC. 5. The right of action to recover damages for injuries result-

ing in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

12 SEC. 6. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State county or municipal governments; and the legislature shall pass laws to provide for the health and safety of employés in factories, smelters and mines.

SEC. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article."

The first section of the act makes it the duty of the legislature to protect the rights of laboring men by the enactment of just laws calculated to promote the indistrial welfare of the prople—such laws as will be just to all classes.

The command is to the law-making department of the State, and the only express limitations upon the power are that such laws shall be just and calculated to promote the welfare of the industrial classes. The legislature must decide whether the law is just and adapted to the purpose named; and unless the law is so palpably unjust or so clearly not calculated to promote the purposes mentioned in the constitution as to remove every reasonable doubt that it is unjust, or that it is not calculated to promote the purposes expressed in the constitution, the court should not hold it without the scope of the authority mentioned in that instrument.

The first clause of section 6 declares that "eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, county, or municipal government."

13 We presume the object of this provision was to protect the laboring man from the injurious consequences of prolonged physical effort and to give him the remainder of the twenty-four hours for his own personal affairs and for the cultivation of his mental and moral powers, the acquisition of useful knowledge, and for rest and sleep.

The second clause of the section commands the legislature to pass laws "for the health and safety of employés in factories, smelters, and mines."

This provision must be regarded an an expression of the will of the people of the State with respect to the subjects and objects of legislation named in it; and they possessed the power to enact laws with respect to such subjects that the people of the United States had not conferred in the National Constitution exclusively on that government. Any laws adapted to the preservation of the health or safety of employés in factories, smelters, or mines is within the scope of this provision. The law must be connected with some of the objects named and calculated to effect that purpose. If it is not so connected and adapted the court has the right to hold that it is not within the scope of the provision; but if there is a reasonable doubt as to the connection and adaptation the advisability must be held by the court to have been with the law-making power. The court must be able to see clearly that the law was not so connected before holding it void for that reason.

If the power to pass the law is conceded the court cannot set it

aside because it may deem its enactment unnecessary or injudicious or because the court may think that experience has proven it so or because the court may think itself more sagacious than the
14 legislature, and can therefore *experience has proven it so or because the court may think itself more sagacious than the legislature, and can therefore* see more clearly that the law will retard rather than promote progress and prosperity, and will be a detriment to the commo- good when actually applied to human affairs amid the conditions of the future.

This brings us to the question, Is the first section of the statute limiting the period of employment of laboring men in underground mines to eight hours per day, except in cases of emergency, where life or property is in imminent danger, calculated to protect the health of such laboring men?

The effort necessary to successfu! mining if performed upon the surface of the earth in pure air and in the sunlight prolonged beyond eight hours might not injuriously affect the health of an able-bodied man; when so extended beneath the surface, away from the sunlight, might injuriously affect their health. It is necessary to use artificial means to supply pure air to men laboring in mines any considerable distance from the surface. That being so, it is reasonable to assume that the air introduced and the impure air beneath the surface when mixed is not as healthful as the free air upon the surface. The fact must be conceded that the breathing of pure air is wholesome and the breathing of impure air is unwholesome.

We cannot say that the law limiting the period of labor in underground mines to eight hours each day is not calculated to promote health; that it is not adapted to the protection of the health of the class of men who work in underground mines.

15 While the provision of the constitution under consideration makes it the duty of the legislature to enact laws to protect the health and to secure the safety of men working in underground mines and in factories and smelters, it does not prohibit the legislature from enacting other laws affecting such classes to promote the general welfare.

While the Constitution of the United States is a delegation of powers to that Government, with some express limitations upon the powers conferred, it also contains limitations upon the powers of the States. The government which it created is regarded as one of enumerated and delegated powers. On the other hand, while the State constitution contains some mandatory provisions, with others distinguishing the departments of the government and specifying the duties of various officers thereof, it contains many limitations upon the State, and is regarded in a general sense as a limitation upon the State government. The authority of the General Government is ascertained from the powers delegated, while those of the State government are ascertained from those not prohibited. The powers of the first are described by those delegated, and the powers of the latter consist of those not prohibited. This leaves the State legislature in the possession of all the law-making power not prohibited to it by

the Constitution of the United States, or the laws made in pursuance of it, or by the State constitution.

The enactment of some laws is made mandatory; the enactment of others is left to the discretion of the legislature as the public welfare may demand. Among the mandatory provisions of the constitution of this State is the one under consideration.

16 It is claimed that the enactment of the statute in question was forbidden by section 7 of article 1 of the constitution of the State, which is that "No person shall be deprived of life, liberty, or property without due process of law."

The petitioner insists that his trial was not and that his imprisonment is not according to "the law of the land," because the statute fixing the period of labor of a laboring man in underground mines was, as he claims, forbidden by the constitution, and therefore void. If the legislature had power to pass the law, there was no valid objection to his trial, fine, and imprisonment. If the law was valid the usual and ordinary process was adopted; if it was not valid the defendant was deprived of his liberty without due process of law.

It is also insisted that the provisions of the State law *was* forbidden by section 1 of article 14 of the Constitution of the United States as follows: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This section declares, 1st, that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside; they are made citizens of two distinct governments; 2nd, it de-

17 clares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The enactment of State laws depriving or abridging the privileges or immunities of citizens of the State is left to the State legislature, so far as this provision goes. It secures to citizens of the United States in any State the privileges and immunities of the citizens of that State.

Expounding the provision now under consideration, the Supreme Court of the United States said: "The constitutional provision there alluded to did not create those rights which it called privileges and immunities of citizens of the State. It threw around them in that clause no security for the citizen of the State in which they were claimed and exercised, nor did it profess to control the power of the State government over the rights of its own citizens. Its sole purpose was to declare to the several States that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise,

the same, neither more or less, shall be the measure of the rights of citizens of other States within your jurisdiction."

Slaughter-house cases, 16 Wall., 76.

As the plaintiff is a citizen of this State, the second clause of the first section last above quoted has no bearing upon his case, as his privileges and immunities must be ascertained from the constitution of the State and its laws.

The third clause of the section declares that no State shall "deprive any person of life, liberty, or property without due process of law."

This in effect is the same as section 7 of article 1 of the State constitution, and means process authorized by the law of the
18 land; and, as we have seen, if the State law which the plaintiff was charged with violating was valid, if the legislature had power to pass it, there was no substantial objection to the process. It was suitable and proper to the nature of the case and sanctioned by the established usages of the courts.

The last clause of section 1 of article 14 of the Federal Constitution declares that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

The slaves in the various States in which slavery existed having been liberated during the late war, Congress deemed it necessary to make them citizens of the United States and forbid the States the denial to them the equal protection of the law. At that time the laws of all the States in terms gave equal protection to all white persons. This amendment, however, is general and forbids the denial to any class of persons the equal protection of the laws by any State, and we have no doubt that class legislation is forbidden.

But some pursuits are attended with peculiar hazards and perils, the injurious consequences from which may be largely prevented by precautionary means, and laws may be passed calculated to protect the classes of people engaged in such pursuits. It is not necessary to extend the protection to persons engaged in other pursuits not attended with similar dangers. To them the law would be inappropriate and idle. So, if underground mining is attended with dangers peculiar to it, laws adapted to the protection of such miners from such danger should be confined to that class of mining and should not include other employments not subject to them; and if men engaged in underground mining are liable to be injured in
their health or otherwise by too many hours' labor each day
19 a law to protect them should be aimed at that peculiar wrong.

In this way laws are enacted to protect people from perils from the operation of railroads by requiring bells to be rung and whistles sounded at road crossings and the slacking of the speed of the trains in cities. So the sale of liquor is regulated to lessen the evils of the liquor traffic, and other classes of business are regulated by appropriate laws. In this way laws are designed and adapted to the peculiarities attending each class of business. By such laws different classes of people are protected by various acts and pro-

visions. In this way various classes of business are regulated and the people protected by appropriate laws from dangers and evils that beset them—safety is secured, health preserved, and the happiness and welfare of humanity promoted.

All persons engaged in business that may be attended with similar injury to health or otherwise, when regulated and controlled, should be subject to the same law; otherwise the law should be adapted to the special circumstances of the particular business.

The purpose of such laws is not advantage to any person or any class of persons, or disadvantages to any other person or class of persons. Necessary and just protection is the sole object.

An ordinance of the city and county of San Francisco prohibited the washing and ironing of clothes in public laundries and washhouses within certain prescribed limits of the city and county from ten o'clock at night until six o'clock on the morning of the following day, and one Soon Hing was fined and imprisoned for a violation of it, and he petitioned for a writ of *habeas corpus* on the
20 ground that the ordinance was void because it discriminated between the class of laborers engaged in the laundry business and those engaged in other kinds of business; that it discriminated between laborers beyond the designated limits and those within them; that it deprived the petitioner of the — to labor, and, as a necessary consequence, of the right to acquire property, and that the board had no power to pass it.

The writ was denied by the lower court and the judgment was brought before the Supreme Court of the United States and affirmed by that court. Among other things, that court said in its opinion: "The specific regulations for one kind of business which may be necessary for the protection of the public can never be the just ground of complaint because like restrictions are not imposed upon other business of a different kind. The discriminations which are open to objection are those where persons engaged in the same business are subject to different restrictions or are held entitled to different privileges under the same conditions. It is only then that the discriminations can be said to impair that equal right which all can claim in the enforcement of the laws."

Soon Hing *v.* Crowley, 113 U. S., 703.

Barbier *v.* Connolly, *id.*, 27.

Our attention has been directed to the rule by which the court should be governed in deciding upon the constitutionality of the law in question, and reference is made to the case of Dartmouth College *v.* Woodward, 4 Wheaton, 629, wherein Chief Justice Marshall, in delivering the opinion of the court, said: "That in no doubtful case would it (the court) pronounce a legislative act to be contrary to the Constitution."

21 In the Sinking Fund cases the same court said: "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the Government cannot encroach on the domain of another without danger. The safety of our institutions

depends in no small degree on a strict observance of this statutory rule."

99 U. S., 700.

Powell *v.* Pennsylvania, 127 U. S., 678.

In this last case the constitutionality of a statute of Pennsylvania prohibiting the manufacture or sale or offering for sale or having in possession with intent to sell oleomargarine butter was questioned. No evidence was offered on the trial in the court even to prove that the oleomargarine was impure or unwholesome; on the contrary, there was an offer to prove that it was a wholesome and nutritious article of food, in all respects as wholesome as butter produced from pure unadulterated milk or cream from unadulterated milk. The court held that whether the manufacture of oleomargarine of the kind described in the statute involved such danger to the public health as to require for the protection of the people the entire suppression of the business rather than its regulation in such manner as to permit its manufacture and sale to go on were questions of fact and of public policy which belonged to the legislative department to determine, and that the court could not interfere without usurping powers committed to the legislative department.

The case of People *v.* Warden of City Prison held the enactment of a law prohibiting any person from exercising the calling of a master plumber without passing an examination before a board of examiners a valid exercise of the police power. In its opinion
22 the court further held that if legislation is calculated to protect the public health and promote the public comfort and safety the exercise of the legislative discretion is not the only subject of judicial review, but those measures must have some relation to those ends.

39 N. E. R., 686.

We have examined a number of authorities to which reference has been made, and those which we deem most pertinent to the case in hand we will further examine in this opinion.

Judge Cooley says: "Whether a statute is constitutional or not is always a question of power—that is, a question whether the legislature in the particular case, in respect to the subject-matter of the act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. In any case in which this question is answered in the affirmative the courts are not at liberty to inquire into the proper exercise of the power. We must assume that legislative discretion has been properly exercised."

Cooley's Constitutional Limitations, 6th ed., page 220.

The same author says at pages 200 and 201: "That except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case."

Undoubtedly sovereignty resides in the people, and their will is expressed in constitutions and laws—in constitutions in the mode prescribed and in statutes through the legislature—and if the
23 law is in harmony with the Federal and State constitutions it must stand until the law-making power changes it. It is the duty of the court to interpret, construe, expound, and apply the law, whether it be expressed in constitutions or in statutes or whether it be the common law; but courts have not been entrusted with the law-making power; that power is in the hands of another department of government.

The supreme court of Massachusetts, in the case of The Commonwealth *v.* Hamilton Manufacturing Company, held that a law declaring that a woman should not be employed at labor by any person, firm, or corporation in any manufacturing establishment more than ten hours in any one day, except in certain cases, and in no cases more than sixty hours a week was constitutional and valid. In deciding the point the court said: "It does not forbid any person, firm, or corporation from employing as many persons or as much labor as such person, firm, or corporation may desire, nor does it forbid any person to work as many hours a day or week as he chooses. It merely provides that in an employment which the legislature has evidently deemed to some extent dangerous to health no woman shall be engaged in labor more than ten hours a day or sixty hours a week. There can be no doubt that such legislation can be maintained, either as a health or police regulation, if it were necessary to resort to either of these sources for power. This principal has been so frequently recognized in this Commonwealth that reference to the decisions is unnecessary."

120 Mass., 383.

In the case of Ritchie *v.* The People, 155 Ill., the following provision of the statute of that State was held unconstitutional and void: "No female shall be employed in any factory or work-
24 shop more than eight hours in any one day or forty-eight hours in any one week." In deciding upon the law the court said the police power of the State enables it to promote the health, comfort, safety, and welfare of society, and that it was very broad and far-reaching, but that it was not without its limitations; that "legislativ- acts passed in pursuance of it must not be in conflict with the constitution and must have some relation to the ends sought to be accomplished—that is to say, to the comfort, welfare, or safety of society;" and further on the court als- said: "But the police power of the State can only be permitted to limit or abridge such a fundamental right, as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare, and safety of society or the public." Just preceding the statement of this proposition reference is made to an inference and to a natural law. "There is no reasonable ground, at least none which has been made manifest to us in the argument of counsel, for fixing upon eight hours in one day as the limit within which women can

work without injury to her physique and beyond which if she work injury will necessarily follow."

The court assumed a very wide discretion in passing upon the reasonableness and appropriateness of the law which it pronounced absolutely void.

In Frorer *v.* The People, 141 Ill., 171, the court held a statute unconstitutional which made it unlawful for any natural or legal person while in the business of mining or manufacturing to engage or be interested in keeping or controlling any truck store, shop, or scheme for the furnishing of supplies, tools, clothing, provisions, or groceries to employés. The court said in its opinion that
25 "in all that relates to mining and manufacturing wherein they differ from other branches of industry we recognize the supremacy of the General Assembly to determine whether any, and, if any, what, statutes shall be enacted for their welfare and that of operatives therein and necessarily affecting them alone; but keeping stores and groceries or supplies of tools, clothing, and food, by whatever name, to sell to laborers in mines and manufactories is entirely independent of mining and manufacturing," and said further that it did not regulate the duties of employés and employe-in respect to mining; that it imposed disabilities as to contracting as to tools, clothing, and food, matters as to which all laborers in every other branch of industry are permitted to contract without any restriction. The principle objection to the law was that it was unequal. The court said that it was impossible under the police power that what is lawful if done by A if done by B can be a misdemeanor, the circumstances and conditions being the same.

A law of the State of New York to improve the public health by prohibiting the manufacture of cigars and the preparation of tobacco in tenement-houses in certain cases was held unconstitutional by the court of appeals. While the act professed to be a health law, the court was of the opinion that it was not. The court said: "It is plain that this is not a health law, and that it has no relation to the public health," and for that reason held it of no effect.

Matter of the Application of Jacobs, 98 N. Y., 98.

We do not agree with defendant's counsel that the business of mining is affected with a public interest and the legislature
26 had the power to pass the law for that reason. Mines are owned by private persons or corporation-, who have the exclusive use and control of them, as a farmer may own his farm and have the exclusive use and control of it. The fact that the business may benefit the public does not give the public any interest in the mine or its business or affect it with a public interest. It is not like the railroad business. Such property and business is owned by a private corporation, but the use of the road is in the public. Travelers and shippers have a common right to use the road for such purposes by paying fares or freights. The same may be said of other classes of business similarly affected with a public use and interest.

On this point the court said in the last-cited case: "Although the

legislature may declare it to be public, that does not necessarily determine its character. It must in fact be public, and if it is not, no legislative fiat can make it so."

Matter of Townsend, 39 N. Y., 171.
Matter of Deansville Cemetery Asso., 66 *id.*, 569.
Matter of Eureka Basin Warehouses and Mfg. Co., 99 *id.*, 42.
Rockwell *v.* Nearing, 35 *id.*, 302.

But while the business of mining may not be affected with a public interest the legislature may enact laws adapted to the promotion of the health and safety of men working in underground mines.

"Whatever difference of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does exist to the protection of the lives, health, and property of the citizens and to the preservation of good order and the public good.

The legislature cannot by any contract divest itself of the
27 power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim *solus populi suprema lex*, and they are to be attained and provided for by such appropriate means as the legislative discretion may devise; that discretion can no more be bargained away than the power itself."

Beer Co. *v.* Massachusetts, 97 U. S., 25.

The section of the statute whose constitutionality is involved in this case includes all employés and employers engaged in working underground mines; none are omitted who may be subject to the peculiar conditions that attend such mining. The provision of the State constitution quoted makes it the duty of the legislature to "pass laws to provide for the health and safety of employés in factories, smelters, and mines;" and we are not authorized to hold that the law in question is not calculated and adapted in any degree to promote the health and safety of persons working in mines and smelters. Were we to do so and declare it void, we would usurp the powers entrusted by the constitution to the law-making power.

The discharge of the petitioner is denied, and he is remanded to the custody of the sheriff named until discharged according to law.

We concur:
BARTCH, *J.*
MINER, *J.*

Endorsed: Albert F. Holden *v.* Harvey Hardy, sheriff. Opinion. Filed October 29th, 1896. Lilburn P. Palmer, clerk supreme court.

28 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Petition for Writ of Error. (Mine Case.)

And now comes Albert F. Holden, the plaintiff herein, and shows that on the 29th day of October, 1896, judgment herein was rendered in this court against this plaintiff and affirming a conviction of this plaintiff under chapter 72 of the Laws of Utah, approved March 30th, 1896; in which judgment and the proceedings in the cause prior thereto certain errors were committed, to the prejudice of this plaintiff; all of which will more fully appear from the assignment of errors which is presented with this petition.

Wherefore the plaintiff prays that upon the record, proceedings, and judgment in this cause, now here before the court and the judges thereof, that a writ of error may be allowed and issue removing this cause to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated October 30th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

29 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Assignment of Errors. (Mine Case.)

The plaintiff in this cause, in connection with his petition for a writ of error, makes the following assignment of errors, to wit:

The supreme court of the State of Utah erred in the following respects, to wit:

First. In holding that chapter 72 of the Laws of Utah, approved March 30th, 1896, is a valid enactment and not repugnant to the Constitution of the United States, and in affirming the conviction of the plaintiff thereunder, and in not holding that said act was repugnant to the Constitution of the United States and void and the conviction of the plaintiff thereunder unlawful.

Second. In holding that said act did not deprive the plaintiff of his property and liberty without due process of law.

Third. In holding that said act did not impair lawful contracts made by plaintiff and his right to make lawful contracts.

Fourth. In holding said act is not class legislation and is equal and uniform.

Fifth. In holding that it does not deprive the plaintiff of the equal protection of the laws or abridge his privileges and immunities as a citizen of the United States.

Dated October 30th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

30 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Order Allowing Writ of Error. (Mine Case.)

The plaintiff, by his attornies, having filed herein and presented to the court his petition praying the allowance of a writ of error to be urged by him, and praying that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and it sufficiently appearing from the record and procedings herein that in this cause there is drawn in question the validity of a statute of the State of Utah on the claim that it is repugnant to the Constitution of the United States, and that the decision was in favor of its validity—

On consideration thereof it is ordered that the writ of error herein as prayed be, and the same is, allowed upon the plaintiff giving a bond in the sum of one thousand (1,000) dollars, which shall operate as a supersedeas bond.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Dated Oct. 30th, 1896.

Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

31 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARVY, Sheriff of Salt Lake County, Defendant.
} Bond on Writ of Error. (Mine Case.)

Know all men by these presents that we, Albert F. Holden, as principal, and John W. Donnellan and Sam. J. Kenyon, as sureties, all of Salt Lake City, State of Utah, are held and firmly bound unto the defendant, Harvy Hardy, as sheriff of Salt Lake county, in the sum of one thousand (1,000) dollars, to be paid to the defendant, his successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30 day of October, 1896.

Whereas in a suit in the supreme court of the State of Utah between the said Albert F. Holden, as plaintiff, and the said Harvy Hardy, as sheriff and defendant, judgment was rendered against the plaintiff on the 29th day of October, 1896, affirming a conviction of the plaintiff for an alleged violation of chapter 72 of the Laws of Utah, approved March 30th, 1896, and the said plaintiff having obtained a writ of error to reverse the said judgment and filed a copy thereof in the clerk's office of the said court, and a citation directed to the said defendant, citing him to be and appear in the Supreme Court of the United States, in the city of Washington, on the 21st day of December, 1896:

Now, the condition of *the* this obligation is such that if the said Albert F. Holden shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good and shall abide the order and judgment of the court made
32 therein, then the above obligation to be void; else to remain in full force and effect.

A. F. HOLDEN. [SEAL.]
JOHN W. DONNELLAN. [SEAL.]
SAM. J. KENYON. [SEAL.]

Sealed and delivered in the presence of—
W. H. SHEARMAN.

The foregoing bond is approved this 30th day of October, 1896.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

(Copy.)
Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

33 THE UNITED STATES OF AMERICA, *ss:*

To Harvy Hardy, sheriff of Salt Lake county, in the State of Utah, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 21st day of December, 1896, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Utah, wherein Albert F. Holden is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of Salt Lake, in said State of Utah, this 31st day of October, in the year of our Lord one thousand eight hundred and ninety-six.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Personal service on me of a copy of the above citation was made Oct. 31st, 1896, at Salt Lake City, Utah.

HARVEY HARDY,
Sheriff Salt Lake Co., Utah.

34 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Utah, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Albert F. Holden, plaintiff, and Harvy Hardy, as sheriff of Salt Lake county, defendant, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Albert F. Holden, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 21st day of December, 1896, in the

Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court
35 may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 31st day of October, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal United States Circuit Court, District of Utah.]

JERROLD R. LETCHER,
Clerk U. S. Circuit Court, District Utah.

Allowed by the Honorable Charles S. Zane, chief justice supreme court, State of Utah.

36 UNITED STATES OF AMERICA.

STATE OF UTAH, }
County of Salt Lake. }

I, Lilburn P. Palmer, clerk of the supreme court of Utah, in pursuance of a writ of error allowed in the case wherein Albert F. Holden is plaintiff *v.* Harvey Hardy, sheriff, etc., is defendant, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, bond, order allowing writ, together with the original citation and writ of error, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, and bond is a full, true, and correct copy of the several originals thereof on file and of record in my office.

Seal Supreme Court State of Utah, Jan. 4, 1896.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of Utah this 4th day of November, A. D. 1896.

LILBURN P. PALMER,
Clerk Supreme Court of Utah.

Endorsed on cover: Case No. 16,434. Utah supreme court. Term No., 655. Albert F. Holden, plaintiff in error, *vs.* Harvy Hardy, sheriff of Salt Lake county, in the State of Utah. Filed November 19, 1896.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 394.

ALBERT F. HOLDEN, PLAINTIFF IN ERROR,

vs.

JOSEPH HARDY, SHERIFF OF SALT LAKE COUNTY, IN THE STATE OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

FILED NOVEMBER 24, 1898.

(16,437.)

(16,437.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 658.

ALBERT F. HOLDEN, PLAINTIFF IN ERROR,

vs.

ARVY HARDY, SHERIFF OF SALT LAKE COUNTY, IN THE STATE OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1896.

13654

a In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant. } On *habeas corpus.*

Transcript — Mill Case.

1 STATE OF UTAH, *County of Salt Lake.*

In the Justice's Court of the First Precinct, Salt Lake City.

Before W. H. Sells, justice of peace.

THE STATE OF UTAH
vs.
A. F. HOLDEN, Defendant.

Complaint.

On this twentieth day of June, A. D. one thousand, eight hundred and ninety-six, before me, W. H. Sells, justice of the peace within and for the first precinct of Salt Lake City, Salt Lake county, State of Utah, personally appeared C. O. Whittemore, county and prosecuting attorney for the county of Salt Lake, in the State of Utah, in his official capacity, and in the name and by the authority of the State of Utah, informs the court upon his oath that the said defendant, Albert F. Holden, on the 6th day of June, A. D. 1896, at the county of Salt Lake, State of Utah, unlawfully did employ one William Hooley to work and labor in a certain concentrating mill in Bingham canyon, in the county aforesaid, the same being an institution for the reduction of ores, for the period of twelve hours each day, and said defendant, on the date aforesaid and continuously since said time, has unlawfully required said William Hooley, under and by virtue of said employment, to work and labor in said concentrating mill aforesaid for the period of twelve hours each day, and that said employment was not in case of an emergency or where life or property was in imminent danger, contrary to the provisions of the statute of the State aforesaid, and against the peace and dignity of the State of Utah.

C. O. WHITTEMORE,
County Attorney.

Subscribed and sworn to before me the day and year first above written.

W. H. SELLS,
Justice of the Peace.

2 (Title of Court and Cause.)

Warrant of Arrest.

The State of Utah to the sheriff, constable, or any policeman of Salt Lake county, State of Utah, Greeting:

A complaint, upon oath, having been this day made before me, W. H. Sells, a justice of the peace, within and for the first precinct, Salt Lake City, county of Salt Lake, State of Utah, by C. O. Whittemore, county attorney, that the offense of violating the provisions of chapter 72 of the Laws of the State of Utah, known as the eight-hour law, has been committed, and accusing Albert F. Holden thereof:

You are therefore commanded forthwith to arrest the above-named Albert F. Holden and bring him before me, forthwith, at my office in said precinct and county, or, in case of my absence or inability to act, before the nearest and most accessible magistrate in this county, to answer to the charge preferred against him.

Witness my hand at Salt Lake City, in said county, this 22nd day of June, 1896.

(Signed) W. H. SELLS,
Justice of the Peace.

STATE OF UTAH, }
County of Salt Lake, } ss:

I hereby certify that I received the within warrant on the 22nd day of June, A. D. 1896, and served the same by arresting the within-named defendant, Albert F. Holden, and bringing him into court this 22nd day of June, A. D. 1896.

(Signed) HARVEY HARDY, *Sheriff,*
Per JOHN MONTGOMERY, JR.,
Deputy Sheriff.

Fees, $2.00.

3 (Title of Court and Cause.)

And now comes the defendant and for a plea to the complaint herein, says he is not guilty in manner and form as charged.

And for a further plea the said defendant, and admitting that at the time and place alleged he employed the said William Hooley for the hours per day, and for the work and in the mill alleged, and that the said William Hooley has since worked in pursuance of said employment, says he is not guilty because he is a native-born citizen of the United States, residing in the State of Utah, that the said William Hooley voluntarily engaged his services for the hours per day alleged, and that the facts charged do not constitute a crime, because the act of the legislature of the State of Utah, which creates and defines the supposed offense, and is known as chapter LXXII of the laws of the State of Utah, approved March 30th, 1896, is repugnant to the Constitution of the United States, and especially to that part of said Constitution known as the XIV amendment, and that the said act of the legislature of the State of Utah, is void,

and repugnant to and in violation of the Constitution of the United States in these respects:

It deprives the defendant and all employers and employees of the right to make contracts in a lawful way and for lawful purposes.

It is class legislation and not equal or uniform in its provisions.

It deprives the defendant and employers and employees of the equal protection of the laws, abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law.

THOS. MARSHALL,
W. H. DICKSON,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Defendant.

4 (Title of Court and Cause.)

Copy of Entries in Justice's Docket.

Filed affidavit of C. O. Whittemore this 20th day of June, 1896, charging defendant with the crime of violating the eight-hour law. Warrant of arrest issued on the 22d day of June, 1896, and thereafter warrant returned on the 22d day of June, 1896. Defendant appeared on the 22d day of June, 1896, and entered plea of not guilty. Case set for trial on the 25th day of June, 1896, 9 a. m. Defendant admitted to bail in the sum of his own recognizance. Plea of defendant filed.

Case tried on the 25th day of June, 1896, before the court, and the people were represented by C. O. Whittemore, attorney, and the defendant by Bennett, Harkness, Howat & Bradley, attorneys. Witnesses sworn and examined on the part of the people *were* Albert F. Holden.

Now, on this 25th day of June, 1896, at 9 o'clock a. m., this cause coming on to be heard, and The State, the plaintiff herein, appearing by C. O. Whittemore, county attorney, and Frederick Garfield Waite, and the defendant appearing in person and by Messrs. Bennett, Harkness, Howat & Bradley, his attorneys, and the court having heard the evidence in the case and being fully advised in the premises, doth find that the defendant is guilty as charged in the complaint herein.

It is therefore ordered and adjudged by the court, that the defendant is guilty of a misdemeanor as charged in the complaint herein in violation of the provisions of chapter 72 of the Laws of the State of Utah of 1896, approved March 30th, 1896, and now in force.

And it is therefore further ordered and adjudged that said defendant pay a fine of fifty dollars ($50) and the costs of this suit taxed at seven and $\frac{80}{100}$ dollars ($7.80), and that the defendant be imprisoned in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven (57) days, or until said fine and costs be paid, if they be sooner paid, or until so much of said fine and costs

be paid as shall remain due and unpaid after deducting from said fine and costs the amount represented by each day of said confinement at hard labor at the rate of one dollar per day, or until the same be secured to be paid as provided by law.

5 (Title of Court and Cause.)

Commitment.

The State of Utah to the sheriff of Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing William Hooley to work and labor in a concentrating mill in Bingham canyon in said county, for a period of twelve hours each day, contrary to the provisions of chapter LXXII of the Laws of 1896 of the State of Utah, said crime having been committed within the limits of Salt Lake county, and State of Utah, on the 6th day of June, A. D. 1896, contrary to the statutes of said State of Utah in such case made and provided; and,

Whereas, the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50) and costs taxed at seven and $\frac{80}{100}$ dollars ($7.80) and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days, or until said fine and costs be fully paid, if it be sooner paid; and,

Whereas, said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom;

Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days, or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars ($57.80) be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

6 STATE OF UTAH, }
County of Salt Lake. }

To the honorable the supreme court of the State of Utah:

The petition of Albert F. Holden respectfully shows: That he is a native-born citizen of the United States and a citizen of the State of Utah, residing in the city and county of Salt Lake.

That he is imprisoned and restrained in his liberty by Harvey Hardy, acting as sheriff of the county of Salt Lake in said State of Utah, and is in the custody of said sheriff.

That the cause of his imprisonment is as follows:

That on or about the 20th day of June, 1896, C. O. Whittemore, county attorney for said Salt Lake county, filed in the justice's court of the first precinct for said city of Salt Lake and before W. H. Sells, Esq., the justice of the peace of said precinct, a complaint against your petitioner for a violation of chapter LXXII of the Laws of the Legislature of the State of Utah by the employment for more than eight hours per day of William Hooley, a copy of which complaint is annexed and made a part hereof. That a warrant was issued, your petitioner arrested, and a copy of the warrant and return thereon is annexed and made a part of this petition.

That your petitioner filed pleas to said complaint, a copy of which is annexed as a part of this petition.

That afterward, on the 25th day of June, 1896 the cause was heard in said court and your petitioner adjudged guilty as charged, and adjudged to pay a fine of fifty dollars and in default of payment to be imprisoned in the county jail of Salt Lake county, Utah.

A copy of the docket and proceedings before said court is annexed and make a part hereof.

That in default of payment, a warrant of commitment was issued by said justice from said court, and delivered to the sheriff of said county, who arrested and holds your petitioner in actual custody on said warrant of commitment, a copy of which is annexed and made a part hereof.

And on information and belief, your petitioner alleges that
7 no other or further cause exists for the imprisonment of your petitioner.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued returnable in the supreme court of the State of Utah, that your petitioner be discharged from his imprisonment and that such relief may be granted as the case requires.

ALBERT F. HOLDEN, *Petitioner.*

STATE OF UTAH,
County of Salt Lake, } ss:

Albert F. Holden, being duly sworn, says: I am the petitioner named in the foregoing petition, and said petition is true of my own knowledge, except as to matters stated therein on information and belief, and as to those matters I believe it to be true.

——.

Subscribed and sworn to before me, June 29, 1896.

C. E. STANTON, *County Clerk,*
[SEAL.] By FRED. W. DENNIS, *Deputy.*

STATE OF UTAH,
County of Salt Lake, } ss:

STATE OF UTAH
vs.
ALBERT F. HOLDEN.

On the annexed petition of Albert F. Holden a writ of *habeas corpus* is allowed, returnable before the supreme court of the State of Utah, at 10 o'clock a. m. on the 14th day of September, 1896, at the court-room in Salt Lake City, Utah, and J. H. Miller is appointed to serve said writ.

C. S. ZANE,
Chief Justice Supreme Court, Utah.

8 STATE OF UTAH,
County of Salt Lake, } ss:

Harvey Hardy, sheriff of the county of Salt Lake, State of Utah:

You are commanded to have the body of Albert F. Holden, by you detained as it is alleged, before the supreme court of the State of Utah, at the supreme court room in the city and county building in Salt Lake City, Salt Lake county, State of Utah, at 10 o'clock a. m. on the 14th day of Sept., A. D. 1896, to be dealt with according to law, and to abide such order as the court or judge thereof shall make in the premises, and have with you then and there this writ, with a return of your doings in the premises.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

STATE OF UTAH,
Salt Lake County, } ss:

J. H. Miller, being duly sworn, says that on the 1st day of July, 1896, he served the original writ, of which the foregoing is a true copy, by leaving said original writ with John Montgomery, Jr., a deputy sheriff of said county, the person holding and detaining said Albert F. Holden in custody, the said Harvey Hardy being sick and confined to his house and not having said Albert F. Holden in custody.

J. H. MILLER.

[SEAL.] Subscribed and sworn to before me by said J. H. Miller this 1st day of August, 1896.

WM. M. BRADLEY,
Notary Public, Salt Lake County, Utah.

It is stipulated that the foregoing is a full and complete transcript of the record and proceedings in this case, including the proceedings in the justice's court, and is a full transcript of the case for hearing in this court, except the sheriff's return to the writ, which, when made, may be added to the transcript as a part thereof.

——— ———,
Attorneys for the State.

——— ———.
Attorneys for Petitioner.

9 In the Supreme Court of the State of Utah.

STATE OF UTAH
v.
ALBERT F. HOLDEN. } Return on *Habeas Corpus.*

To the hon. the supreme court of the State of Utah and to the judges of said court:

The undersigned, sheriff of Salt Lake county, State of Utah, for answer and return to the petition and writ of *habeas corpus* herein respectfully states—

That on the first day of July, 1896, the writ was personally served by me, in the city and county of Salt Lake, State of Utah, and I annex hereto as part of my return the writ so served.

At the time of service I had the said Albert F. Holden in my custody as said sheriff.

That the cause and grounds of his detention is as follows:

A commitment dated the 25th day of June, 1896, issued and delivered to me by W. H. Sells, Esq., a justice of the peace of the first precinct, in said Salt Lake City, and in pursuance of shich I arrested and detained the said Albert F. Holden. I attach a full, true, and correct copy of said commitment as part of my return.

The execution of said commitment by me is the sole *of* cause of the arrest and detention of said Holden.

By the direction of the court I released the said Albert F. Holden on recognizance until the further order of the court.

Respectfully submitted.

HARVEY HARDY,
Sheriff Salt Lake County,
By JOHN MONTGOMERY, JR.,
Deputy Sheriff.

10 STATE OF UTAH, }
County of Salt Lake, } *ss:*

Harvey Hardy, sheriff of Salt Lake county, State of Utah:

You are commanded to have the body of Albert F. Holden, by you detained, as it is alleged, before the supreme court of the State of Utah, at the supreme court room, in the city and county building in Salt Lake City, Salt Lake county, State of Utah, at 10 o'clock a. m., on the 14th day of September, A. D. 1896, to be dealt with according to law, and to abide such order as the court or judge thereof shall make in the premises; and have with you then and there this writ, with a return of your doings in the premises.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

11 In the Justice Court of the First Precinct, Salt Lake City, State of Utah.

Before W. H. Sells, justice of the peace.

THE STATE OF UTAH
v.
ALBERT F. HOLDEN. } Commitment.

The State of Utah to the sheriff of said Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing William Hooley to work and labor in a certain concentrating mill in Salt Lake county, Utah, for a period of twelve hours each day, contrary to the provisions of chapter 72 of the Laws of 1896 of said State of Utah, said crime having been committed within the limits of Salt Lake county and State of Utah on the 6th day of June, 1896, contrary to the statutes of said State of Utah in such case made and provided; and

Whereas the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50.00) and costs, taxed at seven and $\frac{80}{100}$ dollars ($7.80), and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days, or until said fine and costs be fully paid, if it sooner be paid; and

Whereas said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom:

12 Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden, and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars, $57.80, be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

13 In the Supreme Court of the State of Utah, Regular September Term.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant.

SEPTEMBER 17, 1896.

This cause, coming regularly to be heard, was argued by Thomas Marshall and Robert Harkness, for the petitioner; by C. S. Varian and O. W. Powers, in reply, was submitted, and by the court taken under advisement.

Title of Court and Cause.

NOVEMBER 11TH, 1896.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the application for the discharge of the defendant be, and the same is hereby, denied and he is remanded to the custody of the sheriff until released in pursuance to law.

14 In the Supreme Court of the State of Utah, September Term, 1896.

STATE OF UTAH
v.
ALBERT F. HOLDEN.

ZANE, *C. J.:*

The defendant was convicted of a violation of section 2 of "An act regulating the hours of employment in underground mines and in smelters and ore reduction works," as follows:

"SECTION 1. The period of employment of workingmen in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SECTION 2. The period of employment of workingmen in smelters, and all other institutions for the reduction or refining of ores or metals shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SECTION 3. Any person, body corporate, agent, manager or employer, who shall violate any of the provisions of section 1 and 2 of this act, shall be deemed guilty of a misdemeanor."

Sess. Laws Utah, 1896, p. 219.

15 This case is analogous to the case of the State of Utah *v.* Albert F. Holden, decided at this term, except that the defendant in that case was convicted of a violation of the first section of the above act in employing a workingman in underground mining more than eight hours per day, and the conviction in this one was for the employment of one William Hooley in his concentrating mill for the reduction of ores more than eight hours per

day. The conditions with respect to health of laborers in underground mines doubtless differ from those in which they labor in smelters and other reduction works on the surface. Unquestionably the atmospheric and other conditions in mines and reduction works differ. Poisonous gasses, dust, and impalpable substances arise and float in the air in stamp mills, smelters, and other works in which ores containing metals combined with arsenic or other poisonous elements or agencies are treated, reduced, and refined, and there can be no doubt that prolonged effort day after day, subject to such conditions and agencies, will produce morbid, noxious, and often deadly effects in the human system. Some organism and systems will resist and endure such conditions and effects longer than others. It may be said that labor in such conditions must be performed. Granting this, the period of labor each day should be of a reasonable length. Twelve hours per day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight; such a period was deemed reasonable.

The people of the State in their constitution made it mandatory upon the legislature to "pass laws to provide for the health and the safety of the employés in factories, smelters, and mines."

Sec. 6, article 16, constitution Utah.

16 We do not feel authorized to hold that the statute quoted was not designed, calculated, and adapted to promote the health of the class of men who labor in smelters and other works for the reduction and treatment of ores; nor can we say that the law conflicts with any provision of the Constitution of the United States; nor do we wish to be understood as intimating that the power to pass the law does not exist in the police powers of the State. The authority to pass laws calculated and adapted to the promotion of the health, safety, or comfort of the people, and to secure the good order of society and the general welfare undoubtedly is found in such police powers. The law in question is confined to the protection of that class of people engaged in labor in underground mines and in smelters and other works wherein ores are reduced and refined.

This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters and other works for the reduction and refining of ores; therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments. Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government.

For a more extended consideration of the questions raised by the assignment of errors in this case, the opinion filed in the case between the same parties, *supra*, is referred to. That case we
17 now reaffirm as governing this one.

The application for the discharge of the defendant is denied, and he is remanded to the custody of the sheriff until released in pursuance of law.

We concur:

BARTCH, *J.*
MINER, *J.*

18 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Petition for Writ of Error. (Mill Case.)

And now comes Albert F. Holden, the plaintiff herein, and shows that on the 29th day of October, 1896, judgment herein was rendered in this court against this plaintiff and affirming a conviction of this plaintiff under chapter 72 of the Laws of Utah, approved March 30th, 1896; in which judgment and the proceedings in the cause prior thereto certain errors were committed, to the prejudice of this plaintiff; all of which will more fully appear from the assignment of errors which is presented with this petition.

Wherefore the plaintiff prays that upon the record, proceedings, and judgment in this cause, now here before the court and the judges thereof, that a writ of error may be allowed and issue removing this cause to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Nov. 12th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

19 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Order Allowing Writ of Error. (Mill Case.)

The plaintiff, by his attornies, having filed herein and presented to the court his petition praying the allowance of a writ of error to be urged by him, and praying that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United

States, and it sufficiently appearing from the record and proceedings herein that in this cause there is drawn in question the validity of a statute of the State of Utah on the claim that it is repugnant to the Constitution of the United States, and that the decision was in favor of its validity—

On consideration thereof it is ordered that the writ of error herein as prayed be, and the same is, allowed upon the plaintiff giving a bond in the sum of one thousand (1,000) dollars, which shall operate as a supersedeas bond.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Dated Nov. 13th, 1896.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

20 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Assignment of Errors. (Mill Case.)

The plaintiff in this cause, in connection with his petition for a writ of error, makes the following assignment of errors, to wit:

The supreme court of the State of Utah erred in the following respects, to wit:

First. In holding that chapter 72 of the Laws of Utah, approved March 30th, 1896, is a valid enactment and not repugnant to the Constitution of the United States, and in affirming the conviction of the plaintiff thereunder, and in not holding that said act was repugnant to the Constitution of the United States and void and the conviction of the plaintiff thereunder unlawful.

Second. In holding that said act did not deprive the plaintiff of his property and liberty without due process of law.

Third. In holding that said act did not impair lawful contracts made by plaintiff and his right to make lawful contracts.

Fourth. In holding said act is not class legislation and is equal and uniform.

Fifth. In holding that it does not deprive the plaintiff of the equal protection of the laws or abridge his privileges and immunities as a citizen of the United States.

Dated Nov. 12th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

21 THE UNITED STATES OF AMERICA, *ss:*

To Harvy Hardy, sheriff of Salt Lake county, in the State of Utah, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 21st day of December, 1896, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Utah, wherein Albert F. Holden is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of Salt Lake, in said State of Utah, this 13th day of November, in the year of our Lord one thousand eight hundred and ninety-six.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

A copy of the foregoing citation was personally served on me at the city of Salt Lake, in the State of Utah, on the — day of ——, 1896.

HARVEY HARDY,
Sheriff of Salt Lake Co., Utah.
CLARK.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

22 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Utah, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Albert F. Holden, plaintiff, and Harvy Hardy, as sheriff of Salt Lake county, defendant, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Albert F. Holden, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 21st day of December, 1896, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court
23 may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 13 day of November, in the year of our Lord one thousand eight hundred and ninety-six.

Seal United States Circuit Court, District of Utah.

JERROLD R. LETCHER.

Allowed by the Hon. Chas. S. Zane, chief justice of the supreme court of Utah.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

24 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County.
} Bond on Writ of Error. Mill Case.

Know all men by these presents that we, Albert F. Holden, as principal, and John W. Donnellan and Sam. J. Kenyon, as sureties, all of Salt Lake City, State of Utah, are held and firmly bound unto the defendant, Harvey Hardy, as sheriff of Salt Lake county, in the sum of one thousand (1,000) dollars, to be paid to the defendant, his successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of October, 1896.

Whereas in a suit in the supreme court of the State of Utah between the said Albert F. Holden, as plaintiff, and the said Harvey Hardy, as sheriff and defendant, judgment was rendered against the plaintiff on the 11th day of November, 1896, affirming a conviction of the plaintiff for an alleged violation of chapter 72 of the Laws of Utah, approve- March 30th, 1896, and the said plaintiff having obtained a writ of error to reverse the said judgment and filed a copy thereof in the clerk's office of the said court, and a citation directed to the said defendant, citing him to be and appear in the Supreme Court of the United States, in the city of Washington, on the 21st day of December, 1896:

Now, the condition of this obligation is such that if the
25 said Albert F. Holden shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good, and shall abide the order and judgment of the court made therein, then the above obligation to be void; else to remain in full force and effect.

ALBERT F. HOLDEN. [SEAL.]
JOHN W. DONNELLAN. [SEAL.]
SAM. J. KENYON. [SEAL.]

Sealed and delivered in the presence of—
W. H. SHEARMAN.

The foregoing bond is approved this 13th day of November, 1896.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Marked: Filed Nov. 13, 1896. Lilburn P. Palmer, clerk supreme court, Utah.

26 UNITED STATES OF AMERICA.

STATE OF UTAH,
County of Salt Lake, } ss:

I, Lilburn P. Palmer, clerk of the supreme court of the State of Utah, in pursuance of a writ of error allowed in the case of Albert F. Holden, plaintiff, *v.* Harvey Hardy, sheriff of Salt Lake county, defendant, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, bond, order allowing writ of error, together with the original citation and writ of error, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, bond, and orders is a full, true, and correct copy of the several originals thereof on file or of record in my office.

Seal Supreme Court State of Utah, Jan. 4, 1896.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of the State of Utah, this 18th day of November, A. D. 1896.

LILBURN P. PALMER,
Clerk Supreme Court of the State of Utah,
By H. W. GRIFFITH,
Deputy Clerk.

Endorsed on cover: Case No. 16,437. Utah supreme court. Term No., 658. Albert F. Holden, plaintiff in error, *vs.* Harvy Hardy, sheriff of Salt Lake county, in the State of Utah. Filed November 24, 1896.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

ALBERT F. HOLDEN, Plaintiff in Error,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Utah,
No. 655.

AND

ALBERT F. HOLDEN, Plaintiff in Error,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Utah.
No. 658.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

In both of the above-entitled cases is involved the constitutionality of the same statute of Utah, the only difference being that in the first thereof (No. 655) the defendant Holden was convicted of a violation of section

one of said act, while in the latter (No. 658) he was prosecuted and convicted under the second section. We will, therefore, in this brief, consider them together, referring in the following statement to the Record in No. 656.

The statute of Utah to which reference has just been made is entitled "An act regulating the hours of employment in underground mines and in smelters and ore reduction works." (*Session Laws of Utah, 1896, p. 219.*) Sections 1, 2, and 3 thereof are as follows:

"*Sec. 1.* The period of employment of working men in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

"*Sec. 2.* The period of employment of working men in smelters and all other institutions for the reduction or refining of ores or metals shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

"*Sec. 3.* Any person, body corporate, agent, manager, or employer who shall violate any of the provisions of sections 1 and 2 of this act shall be deemed guilty of a misdeameanor."

The complaint, which is set forth on page 1 of the Record, charges that, on the 6th June, 1896, the defendant Holden, contrary to the provisions of the statute above quoted, employed to work and labor as a miner in the underground workings of the Old Jordan mine, in the County of Salt Lake, one John Anderson for the period of ten hours each day, and that the said Anderson continued in said employment, whereupon the defendant was arrested, and upon being brought into court (*R., p. 2*) interposed a plea of not guilty in manner and form as charged.

For a further plea the defendant, while admitting that, at the time and place and for the work alleged, he did

employ the said Anderson for ten hours a day, said that he was not guilty because he was a native-born citizen of the United States, because the said Anderson voluntarily engaged his services for the hours per day alleged, and because the facts charged do not constitute a crime, the said statute being repugnant to the Constitution of the United States, in that it deprives the defendant and all other employers and employés of the right to make contracts in a lawful way and for lawful purposes; that it is class legislation and not equal or uniform in its provisions, and that it deprives employers and employés of the equal protection of the laws; that it abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law. (*R., pp. 2, 3.*)

Subsequently, on the 25th of June, 1896, the defendant was found guilty as charged in the complaint, and he was, thereupon, sentenced to pay a fine of $50 and costs, amounting to $7.80, and to imprisonment in the county jail for the term of fifty-seven days, or until said fine and costs be paid (*R., p. 3*); whereupon, having been committed to the custody of the sheriff, the defendant filed a petition in the Supreme Court of Utah for a writ of *habeas corpus* (*R., pp. 4, 5*) which was denied (*see opinion of court, R., pp. 9–18, inc.*), and the case was thereupon removed by writ of error to this court, where it is now pending.

ASSIGNMENT OF ERRORS.

The court below erred in holding—

1. That chapter 72 of the laws of Utah, approved March 30, 1896, under which defendant was convicted, as above set forth, is a valid enactment and not repugnant to the Constitution of the United States, and in affirming the conviction of the plaintiff in error thereunder and not holding the same unlawful.

2. That said act does not deprive the plaintiff in error of his liberty and property without due process of law.

3. That said act does not impair the obligation of lawful contracts made and entered into by the plaintiff in error, and his right to make such contracts.

4. That said act is not class legislation and is equal and uniform.

5. That it does not deprive the plaintiff of the equal protection of the laws, or abridge his privileges and immunities as a citizen of the United States.

6. And other errors appearing in the opinion of said court as set forth in the record herein.

BRIEF.

All the points enumerated in the foregoing assignment of errors were presented to the court below both in the oral arguments and in the printed briefs in the case. They amount, in substance, to the proposition that the law in question is not a legitimate exercise of the police power of the State, in that it deprives mining and smelting employés, and their employers of the right to make contracts which persons in other lines of business may make; that it, therefore, deprives them of the equal protection of the laws, and that in these respects it is class legislation.

The court below, after quoting the provision of the Constitution of Utah (*Sec. 6, Art. 16*), that "the Legislature shall pass laws to provide for the health and safety of employés in factories, smelters and mines," and stating that it assumes that the object of this provision is to protect the miner from the injurious

consequences of prolonged physical effort, etc. (*R., p. 10*), and, as such, is a valid exercise of one of the police powers of the State, in effect, says, that, although any law passed in pursuance of the constitutional provision just quoted *must* be connected with some of the objects and calculated to effect some of the purposes therein expressed, nevertheless, unless the court can see clearly that it is *not* so connected the statute will not be held void on that account. The court, therefore, refused to declare said law void because, while it does not appear from the act itself that it was enacted for the purpose just stated, still it can not be said that the limitation of the period of labor contained therein, to eight hours a day, is *not* calculated to promote and protect the health of the class of men who work in underground mines.

The court below also held that, as the legislature of Utah had the power to enact the law in question, the provision of the Fourteenth Amendment of the Federal Constitution, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," has no bearing upon the present case, it only securing to citizens of the United States, as such, the privileges and immunities enjoyed by citizens of the States of which such citizens of the United States are also citizens. The court further held that if said law was valid, and the legislature had the power to enact it, the plaintiff in error was not thereby deprived of due process of law, as the usual process was resorted to in respect of his trial, conviction, and imprisonment, and, also, that, as said law includes *all* employers and employés engaged in the business of working underground mines, etc., and as none are omitted who may be subject to the peculiar conditions attending such mining, the equal protection of the laws is not denied.

We now proceed to consider in detail the various questions to which we have called attention.

I.

The statute of Utah involved herein is in conflict with the Constitution of the United States, and is not a valid exercise of the police power of the State.

Although it is not so expressed either in the title or in the body of the act in question in this case, and although it is only in the most remote degree, if at all, inferable therefrom, the only possible justification or excuse that can be found or assigned for the enactment of such a law as that now under consideration is that it was enacted in compliance with the section of the State Constitution set forth at pages 9 and 10 of the Record as a regulation for the protection of the health and welfare of laborers engaged in underground mining, etc., and, as such, a valid exercise of that power which is inherent in all the States, commonly known as the "police power"; and this is the ground upon which the court below held it to be a valid enactment.

Therefore, before presenting our views in detail concerning the repugnance of this statute to the Constitution of the United States, and to the various clauses of the Fourteenth Amendment which we think applicable to the matter in controversy, we deem it appropriate to ask the attention of the court, at the outset of this brief, to some of the most conspicuous of the authorities bearing upon the general question as to the *scope* of this police power, and as to the subjects relating to which it may properly be invoked.

1. We have not found in any of the text books or cases an authoritative statement defining and limiting the exact scope and range of this power. In fact, this court itself, in the case of *Stone* v. *Mississippi* (101 U. S., 814), has declined to specifically define it; but in the case of

the *City of New York* v. *Miln* (11 Pet., 102, 139), will be found probably as concise and comprehensive a *general* definition of the term as could be given. The court says:

"We are aware that it is at all times difficult to define any subject with proper precision and accuracy. If this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering [the police power]. If we were to attempt it, we should say that every law came within this description which concerned the welfare of the *whole people* of a State, or any individual within it; whether it relates to their rights or their duties; whether it respected them as men or as citizens of the State; whether in their public or private relations; whether it related to the rights of persons or of property, of the whole people of a State or of any individual within it."

The court, however, is careful to add that this jurisdiction or power can only be exercised where it is not "surrendered or restrained by the Constitution of the United States."

In the case of *Lake View* v. *Rose Hill Cemetery Company* (70 Ill., 192), it is said:

"The police power of a State is co-extensive with *self protection*, and is applicably termed the law of overruling necessity. It is the inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort and welfare of *society*."

See also—

Commonwealth v. *Alger*, 7 Cush., 84;
Railroad v. *Husen*, 95 U. S., 465;
State v. *Noyes*, 47 Maine, 211;
Thorpe v. *Railroad*, 27 Vt., 149.

In the matter of *the Application of Jacobs* (98 N. Y., 107), the court discusses the police power as follows:

"But the claim is made that the legislature could not pass this act in the exercise of the police power. That

power is very broad and comprehensive, and is exercised to promote the health, comfort and safety and welfare of *society*. Its exercise in *extreme* cases is frequently justified by the maxim *salus populi suprema lex est*. It is used to regulate the use of property by enforcing the maxim *sic utere tuo ut alienum non laedas*. Under it the conduct of an individual and the use of property may be regulated so as to interfere, to some extent, with the freedom of the one and the enjoyment of the other; and, in cases of great emergency engendering overruling necessity, property may be taken or destroyed without compensation, and without what is commonly called due process of law. The limit of the power can not be accurately defined, and the courts have not been able or willing definitely to circumscribe it. *But the power, however broad and extensive, is not above the Constitution. When it speaks, its voice must be heeded. It furnishes the supreme law*, the guide for the conduct of legislators, judges, and private persons, *and, so far as it imposes restraints, the police power must be exercised in subordination thereto.* * * * In the *Slaughter House Cases* (16 Wall., 36, 87), Field, J., says: 'All sorts of restrictions and burdens are imposed under the police power, and, when these are not in conflict with any constitutional prohibition or fundamental principles, they can not be successfully assailed in a judicial tribunal. *But under the pretense of prescribing a police regulation, the State can not be permitted to encroach upon any of the just rights of the citizen, which the Constitution intended to secure against abridgment.*'"

After also quoting certain passages from Cooley's Constitutional Limitations, 719; Potter's Dwarris on Statutes, 458; *Commonwealth* v. *Alger* (7 Cush., 84); *Austin* v. *Murray* (16 Pick., 126); *Watertown* v. *Mayo* (109 Mass., 319); *Coe* v. *Schultz* (47 Barb., 64), and *in re. Cheesebrough* (78 N. Y., 232), all to the same effect as that just quoted from the Slaughter House Cases, the court states its conclusions as follows:

"These citations are sufficient to show that the police power is not without limitations, and that in its exercise

the legislature must respect the great fundamental rights guaranteed by the Constitution. If this were otherwise, the power of the legislature would be practically without limitation. In the assumed exercise of the police power in the interests of the health, the welfare or the safety of the public, every right of the citizen might be invaded and every constitutional barrier might be swept away. * * * *Under the mere guise of police regulations personal rights and private property can not be arbitrarily invaded, and the determination of the legislature is not final or conclusive.*"

Another very full and instructive discussion of this subject will be found in the case, above cited, of *Commonwealth* v. *Alger* (7 Cush.), beginning at page 84.

To be valid, legislation enacted for the purpose of promoting the public health, morals, or welfare must be of such a character that it will affect and be for the benefit of the *whole community*, or at least the part of it which is brought into contact with the evils sought to be remedied. Such an enactment must not be so limited in its terms that it can and will, as in the present case, operate upon but one of many classes of employers and employés of the same general description, living and doing business under the same general conditions, even though the occupation in which they are engaged to themselves may be injurious. In other words, it must relate and have reference to the result to the health and welfare of the *community* of the act or omission or the condition sought to be prevented or remedied, and not to the result of such act or omission to the author or person who is responsible for such condition or engaged in the dangerous or injurious occupation—that is, provided such person is *sui juris* and does not come within the class of persons (such as women, children, etc.) over which, as has been held in some of the States, the State has the right, to a limited extent, to exercise control for their *own* good and welfare, and thus indirectly for the welfare of the public.

For instance, a regulation restricting the speed with which railroad trains or horses may be run or driven within the limits of a city is not a regulation enacted for the benefit of, or for the purpose of preventing injury to, persons who may deliberately violate the law. Such persons must of course take whatever risk may be incident to their own indiscretion or recklessness, and if they come to grief, that is a matter in which the public has no concern. Such regulations, on the contrary, are adopted for the benefit and protection of the community at large and to prevent accidents and injury to pedestrians and other persons who may be riding or driving upon the streets of the city and not violating the law.

This is, also, the principle upon which contagious hospitals are not permitted to be near enough to any habitable part of the city to spread disease among its inhabitants, and upon which the owners of a powder factory would be required to locate their plant far enough from the property of others to prevent the possibility of damage or loss of life by reason of an explosion or otherwise. But, although a powder mill is considered an extremely dangerous place in which to work, a law forbidding persons who are *sui juris* to accept employment therein would be clearly unconstitutional and void; and it is not for the protection of the health or lives of the residents of the city who may be employed in a powder mill that such factories are excluded from the city limits, but for the protection of the city itself and the property and lives of the residents who are not so employed.

It is, therefore, not within the power of the legislature to prevent persons who are *sui juris*, and otherwise perfectly competent to contract, from entering into employment and voluntarily making contracts in relation thereto merely because the employment in which they are to engage, although perfectly legal and proper in itself, may be considered by the legislature to be dan-

gerous or injurious to the health of the *employé;* and if such right to contract can not be prevented, it certainly can not be restricted by the legislature to suit its own ideas of the ability of the employé to stand the physical and mental strain incident to the work. The character of the work to be performed, the number of hours a day in which the employé shall work, and the amount of compensation to be paid therefor are purely and necessarily personal matters between the parties to the contract, and are regulated by the terms thereof and by the will of the employer, influenced by considerations as to the requirements of his business and the condition of the market for his products, etc., and it is clear, as it seems to us, that so long as the employment does not interfere with the rights or health of others, the legislature can not prevent it or regulate any of its terms.

If, for any reason, the condition of the market should become such that there was no sale or demand for the product of an iron mine, for example, and the owner, in consequence of this condition, should find that he was running his business at a loss, it would be ridiculous to say that he would not have a perfect right to lay off some of his hands altogether, or to work them all half time, or arbitrarily to reduce the number of working hours of all to any extent he might think necessary or advisable; and if he could do that, we do not see why he could not, for the purpose of meeting an increased demand for the product of his mines and the competition from other sources, or if for any reason the condition of the market warranted it, *increase* the number of hours of his workmen to ten or any other number more than eight that they might be willing to work or contract with him for.

A case here directly in point is that of *Jacobs* (98 N. Y., 98, *supra*), where the court had under consideration a law of New York prohibiting the manufacture of cigars

and the preparation of tobacco in any form in tenement houses, etc. In the opinion the court says:

"To justify this law *it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manufacture may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health.*"

2. But however this may be, it is well settled that, when relating to business enterprises, the business or occupation at which such regulations are directed must be affected with a "public interest," and that the regulation must be for the protection or benefit of the public generally, as we have above contended, and not of an individual or segregated class of individuals under the circumstances we have mentioned.

In this connection it is to be noted that the court below itself, in its opinion (*R., p. 17*) took occasion to state that it did not agree with defendant's counsel that the business of mining is affected with a public interest, and that the legislature had the power to pass the law in question for *that* reason. The language of the court is as follows:

"We do not agree with defendant's counsel that the business of mining is affected with a public interest, and the legislature had the power to pass the law for that reason. Mines are owned by private persons or corporations, who have the exclusive use and control of them, as a farmer may own his farm and have the exclusive use and control of it. The fact that the business may *benefit* the public does not give the public any interest in the mine or its business, or affect it with a public interest. It is not like the railroad business. Such property and business is owned by a private corporation, but the *use* of the road is in the public. Travelers and shippers have a common right to use the road for such purposes by paying fares or freights. The same may be said of other classes of business similarly affected with a public

use and interest. On this point the court said in the last-cited case" (*Matter of Jacobs*, 98 N. Y., 98): 'Although the legislature may declare it to be public, that does not necessarily determine its character. It must in fact be public, and if it is not no legislative fiat can make it so.'"

In Cooley's Constitutional Limitations (4th Ed., p. 476), the various kinds of business enterprises which the author considers affected with a public interest are classified as follows:

"In the following cases we should say that property in business was affected with a public interest: 1. Where the business is one the following of which is not of right, but is permitted by the State as a privilege or franchise. Under this head would be comprised the business of setting up lotteries, of giving shows, etc., of keeping billiard tables for hire, and of selling intoxicating drinks when the sale by unlicensed parties is forbidden, also the cases of toll-bridges, etc. 2. Where the State, on public grounds, renders the business special assistance, by taxation or otherwise. 3. Where, for the accomodation of the business, some special use is allowed to be made of public property or of a public easement. 4. Where exclusive privileges are granted in consideration of some special return to be made to the public. Possibly there may be other cases."

This court, in the case of *Munn* v. *Illinois* (94 U. S., 126), defines the property that is subject to police regulation as follows:

"Property does become clothed with a public interest when used in a manner to make it of *public consequence* and affect *the community at large*. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created."

In Tiedman's Limitations of Police Powers (sec. 179), the author defines the distinction between private and public employments as follows:

"When the employment is connected with a public interest, and particularly when it is connected with the enjoyment of a franchise or privilege not enjoyed by private individuals, a privilege which is granted because it will promote the general welfare, such as the railroad, the telegraph, the telephone, and the like, the public is interested in the proper conduct of the business, and any disturbance of or interference with its regular and orderly prosecution will materially affect the public interest."

This principle is also stated in Cooley's Constitutional Limitations (p. 720), in the following language:

"The maxim *sic utere tuo ut alienum non laedas* is that which lies at the foundation of the power; *and to whatever enactment affecting the management and business of private corporations it can not fairly be applied the power itself will not extend.* * * * 'Powers' it is said in another case, 'which can only be justified on this specific ground (that they are police regulations), and which would otherwise be clearly prohibited by the Constitution, *can be such only as are clearly necessary to the safety, comfort and well-being of society, or so imperatively required by the public necessity as to lead to the rational and satisfactory conclusion that the framers of the Constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case, notwithstanding the language of the prohibition would otherwise include it.*' (*People* v. *Jackson and Michigan Plank Road Co.*, 9 Mich., 307.)"

In the case of *United States* v. *Martin* (94 U. S., 400), in which this court was called upon to construe section 3738 of the Revised Statutes, providing that eight hours shall constitute a day's work for employés of the Government, it was held that said statute was "in the nature of a direction from a principal to his agent that eight hours is deemed to be a proper length of time for a day's labor,

and that his contracts shall be based on that theory," but the court distinguishes between such a direction and the principle involved in the case at bar, as follows:

"The English statute books are full of assizes of bread and ale, commencing as early as the reign of Henry II., and regulations of labor, and many such are to be found in the statutes of the several States. It is stated by Adam Smith, as the law in his day, that in Sheffield no master cutler or weaver or hatter could have more than two apprentices at a time, and so lately as the 8th George III. an act, which remained unrepealed until 1825, was passed, prohibiting, under severe penalties, all master taylors in London, or within five miles of it, from giving, or their workmen from accepting, more than two shillings seven pence half penny a day, except in the case of general mourning." (Smith's Wealth of Nations, 125, 6th Oxford edition of 1869.) "*A different theory is now almost universally adopted. Principals, so far as the law can give the power, are entitled to employ as many workmen, and at whatever degree of skill, and at whatever price they think fit, and, except in some special cases, as of children or orphans, the hours of labor and the price to be paid are left to the determination of the parties interested.* The statute of the United States does not interfere with this principle."

We conclude our citation of authorities upon this general question of police power by again quoting from Tiedman. In section 178 of his said work there will be found as concise and comprehensive a statement of our contention in this regard as could be formulated. It is as follows:

"Laws, therefore, which are designed to regulate the terms of hiring in strictly private employments, are unconstitutional, because they operate as an interference with one's natural liberty in a case in which there is no trespass upon private right and no threatening injury to the public. *And this conclusion not only applies to laws regulating the rate of wages of private workmen, but also any other law whose object is to regulate any of the terms of hiring, such as the number of hours of labor per day, which*

the employer can demand. There can be no constitutional interference by the State in the private relation of master and servant except for the purpose of preventing frauds and trespasses."

3. From the foregoing authorities it would seem to result that an enactment of the legislature, made in pursuance of the police power of a State, or a police regulation, must be for the purpose of enforcing a duty and to punish acts or omissions which may be right or wrong according to the time, place or manner of doing them—that is, the exercise of what would otherwise be a right at a time, place, or in a manner injurious to the public, is prohibited. A general criminal law is to punish something wrong in itself, without regard to the time, place or manner of doing it, and of course such a law, whether enacted by original or delegated authority, is not a police regulation.

Therefore, the violation of the maxim *sic utere tuo ut alienum non laedas* covers every case in which the exercise of the *police power* would be valid or legitimate; and we think no case of a valid police regulation can be found which will not come under this maxim, and which does not refer to the limitation of the exercise of what, under proper circumstances, would be a right, and only becomes a wrong because of its excessive exercise or consequent injury to the health, welfare or morals of the public. Police regulations are, therefore, not enacted for the purpose of punishing wrongs, as such, but to enforce duties to the public in respect to matters which can only become wrongs *sub modo*. The right to destroy property to stay a conflagration and in case of war, etc., is also distinguishable, and is based upon the maxim *salus populi suprema lex*. So of the right of eminent domain; though exercised for a public use, it is based on compensation. In a police regulation, there is only restraint for the *public* welfare.

In a civil case, for instance, the judge would charge the jury, as matter of law, that the mine owner owed a duty to his employés to furnish them with a reasonably safe place within which to work. This duty can be enforced under the police power of the State by means of regulations providing for proper inspection, ventilation, timbering, the securing of openings, the placing of guards, lights, etc., and requiring the employer to take all other appropriate precautions to insure, as far as possible, the safety and health of the employé. In this respect the employé is regarded as part of the public to whom the employer owes the duty just stated. But the judge would also charge that the employé, by his contract, assumed all the dangers of the business that are necessarily incident to it, and of which he knew or could with reasonable care have ascertained, and in this respect the employé is a voluntary contractor with his employer to perform the services required of him, in the manner and at the time required, in consideration of the wages or compensation paid him for the work. If, with regard to the dangers and unwholesomeness of the employment, the employer were under the same liability and duty to his employés as he is to the public, no business of a dangerous character could be conducted.

In the latter case, as to the contract, and the dangers, unwholesomeness, etc., of the work he is required to perform, the employé has separated himself from the public and in respect of the things or dangers against which the public, who have entered into no contractual relations with the employer, have a right to be protected, and has assumed the duties and obligations of a servant to his master. In short, he puts himself in exactly the same situation as the owner of the property or business, who undoubtedly has the right on his own property and in his own business to work as many hours per day as he chooses, to manufacture whatever articles he may choose

to manufacture, to operate a mine, or to do anything which he may deem necessary to the conduct of his business, whether the same be unwholesome or dangerous or not, provided the health, welfare or morals of the public generally are not injuriously affected thereby.

To illustrate: A manufacturer of dynamite has no right to locate where there is danger to the public. On his own land, however, and where there is no possibility of injury to the public, he may carry on his said business, and in its conduct may employ as many men as he may consider necessary for his purposes. The men whom he employs, of course, assume all the necessary risk and dangers of the employment. So far as their contractual relations with their employer extend, they are not a part of the general public, although as to the certain well-defined duties which the master owes to them and to the public generally, some of which we have above enumerated, they are a part of the public. And this seems to explain theoretically why the courts have held certain laws enforcing such duties valid police regulations. Almost universally, as we will hereinafter show, they have held those that affect the right to make contracts void in so far as they have no relation to a mere duty of the employer to his employés.

If, therefore, the Constitution of the State requires the legislature to enact laws respecting the health of miners and others, the law to be valid must relate to the duty of the employer to his employés in the respects we have indicated, and must not interfere with the relation of the parties that rests solely on contract.

The present law has no relation to health or safety, either of the public or the persons affected, or, if so, only in a very remote degree; while its direct and principal effect is to interfere with the rights and liberties of the contracting parties.

It is apparent that if the police power extends to matters affecting contract relations and in which the public

health, etc., is in no way concerned, there is practically no limit to its exercise, and all business conducted in the States, whether of a public, *quasi* public, or strictly private nature, could be made subject to such laws regulative thereof as the legislatures of the respective States might see fit to adopt, and the personal liberty of the citizen, secured to him by the Constitution of the United States, would be entirely subverted.

(4) In this connection we desire to suggest that the constitutionality of this statute must be considered in the light of its *effect* upon the class of persons upon whom it operates, and upon the relation of the prohibition therein contained to the general public. When this is taken into consideration, it is apparent that, even if by any possibility it could fairly be said (as was assumed and said by the court below) that the enforcement of the provision contained in said measure could be conducive of the health or welfare of the employés enumerated therein, and in that respect is not unconstitutional, still it is so flagrantly violative of the rights and liberties of the citizens affected thereby—both of the employer and employé—that it is brought in direct conflict with the Constitution of the United States, if not of the constitution of Utah, and can not for that reason be allowed to stand.

In the case of *Henderson* v. *Mayor of New York* (92 U. S., 268), this court says:

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

And in the case of *Rutherford* v. *Greene* (2 Wheat., 203), it is said:

"Whatever the legislative power may be, its acts ought never to be so construed as to subvert the rights of property, unless its intention to do so shall be expressed in such terms as to admit of no doubt and to show a clear design to affect the object."

The effect of this statute has perhaps already been sufficiently shown in what we have above stated. Should it be allowed to stand, not only would all parties coming within its provisions be actually divested of certain rights and liberties possessed and enjoyed by them before the passage of the act, to-wit, the right to contract with reference to that most important and fundamental of all rights, namely, the right to labor, but such liberty and rights of property would be restricted and denied them in the future, thus placing them at a disadvantage with all other citizens of the same general class and living under the same conditions, and between whom and the class named in the act no radical or essential distinction, such as the authorities hold to be necessary, exists.

If this act had attempted to regulate the *price* to be paid for labor in mines and smelters—for instance, if it had provided that the laborer, although his hours of work should be reduced to eight, should be paid what he had formerly received for ten, there could be no question as to its unconstitutionality, and yet as by the act the period of employment is, without the consent of the laborer, limited to eight hours per day, it would be only fair to the laborer that the act should further provide that he should lose nothing pecuniarily by reason of such reduction or limitation of his earning capacity, other laborers in similar and equally dangerous and unwholesome occupations, such, for example, as engineers, bricklayers, mechanics, glass blowers, employés in manufactories of high explosives, stokers, and the like, being permitted by the act to work and be paid for as many hours per day as they please or can contract for.

Therefore, even if this act can fairly be assumed to have been a measure adopted by the legislature of Utah for the protection of the health or welfare of the class of persons affected thereby, it is, nevertheless, unconstitutional, because, when actually applied, it is found to be

in contravention of the principles, and destructive of the rights and liberties of the citizen to which we have above pointed. To repeat the language of this court in *Boyd* v. *United States* (116 U. S., 635), varying it slightly to suit the circumstances of this case, we have no doubt that the legislature, in enacting this statute, "was actuated by perfectly proper motives," but we presume that "the vast accumulation of public business brought before it prevented it, on a first presentation, from noticing objections which have become developed by time and the practicable application of the objectionable law."

II.

The statute in question abridges priviliges and immunities of the plaintiff in error to which he is entitled as a citizen of the United States.

The plaintiff in error in this case is a native-born citizen of the United States, and was at the time of his arrest, and now is, a citizen of the State of Utah, and as such was and is entitled to all the priviliges and immunities of citizens of the United States as secured to them by the Constitution.

It seems to be settled by the decisions of this court, and of many others that have had this subject under consideration, that among the privileges and immunities secured to the citizen by the Fourteenth Amendment is the right "to pursue unmolested a lawful employment in a lawful manner." (*Live Stock Association* v. *Crescent City Co.*, 1 Abb., U. S., 388, 389.) Incidental to this there is, of course, the further right to enter into contracts relating to the *character* of the services to be performed, the *amount of compensation* to be paid and received therefore, and the *period of time or the number of hours per day* required to perform such labor.

The allowance to the employer of labor, and the working man, of perfect freedom and liberty in this respect is absolutely and manifestly essential in this age of constant progress in business affairs and of great and increasing competition, to enable the employer and laborer, alike, to maintain life and to render any legitimate employment or business in which they may be engaged successful. Whatever may be the wisdom or necessity for enacting laws restrictive of the hours of labor of women, children, or orphans, or the advisability of enacting such laws with reference to the employés in the various kinds of business enterprises that are held to be affected with a public interest, it is perfectly obvious, because of their great diversity and the character and necessities of the different kinds of private business enterprises, that it would be impossible to devise a law or regulation limiting the hours of employment of such employés that would operate with any degree of equality or with anything like justice upon the employers and employés in all private business enterprises, or even those of the same general class.

In the Constitution of the State of Utah itself, this distinction is recognized, and *only the hours of work of employés of the "State, county, and municipal governments"* are attempted to be regulated thereby, the law here in question being claimed to have been authorized and passed under the additional provision that "the legislature shall pass laws to provide for the health and safety of employés in factories, smelters, and mines." The law, however, fails to make any such provision with reference to employés in factories.

As we have seen, such laws as to *public* employés are regarded by the courts merely as directions from a principal to his agent, and as such are held to be competent; but, in the case of private employment or labor, as so aptly stated by this court, "principals, so far as the law

can give the power, are entitled to employ as many men, and of whatever degree of skill, and at whatever price, they think fit, and except in some special cases, as of children and orphans, *the hours of labor* and the price to be paid are left to the determination of the parties interested." (*United States* v. *Martin*, 94 U. S., 400, *supra.*)

Applying the principle last stated to the present case, it can not be said that an act making it a misdemeanor for a private and independent mine operator to employ his workman more than eight hours a day, except in cases of emergency where life or property is in imminent danger, and subjecting him to a fine and imprisonment in consequence of a violation of such provision, does not infringe or abridge the right of both the employer and laborer, to make contracts which persons and corporations in other lines of business may make, and that it does not thus abridge the privileges and immunities so secured to them as citizens of the United States.

We now turn to some of the authorities supporting our present contention, from which it will be seen that, while the courts do not attempt specifically and in detail to enumerate and define all of these privileges and immunities, they are practically unanimous in holding that the right to pursue, in a lawful manner, a lawful vocation or trade, unmolested by laws in any way restrictive of that right, is a privilege that is protected and secured to the citizen by the Constitution of the United States.

The first of the decisions of this court in which we find a definition of the term "privileges and immunities" is that of *Ward* v. *Maryland* (12 Wall., 430), where it is said:

"Attempt will not be made to define the words 'privileges and immunities,' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the

court. Beyond doubt, these words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the rights of the citizens of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation, to acquire personal property, to take and hold real estate, to maintain actions in courts of the State, and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens."

We take the following from the dissenting opinion of Justice Field in the *Slaughter House Cases* (16 Wall., 97):

"The privileges and immunities designated are those which of right belong to citizens of all free governments. *Clearly, among these must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as affects all persons.*"

In the case of *Butchers' Union Co.* v. *Crescent City, etc., Co.* (111 U. S., 746), Justice Field, this time in a concurring opinion, again says:

"Among these inalienable rights, as proclaimed by that great document [the Declaration of Independence] is the right of men to pursue their happiness, by which is meant *the right to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties so as to give them the highest enjoyment.* The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. *The right to pursue them without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright.*

"It has been well said that '*the property which every man has is his own labor; as it is the original foundation*

of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper without injury to his neighbor is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the other from employing whom they think proper.' *Adam Smith's Wealth of Nations, Book 1, Chapter 10.*"

Justice Bradley (with whom concurred Justices Harlan and Woods) in his concurring opinion in the same case also says:

"I hold that the liberty of pursuit—*the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States.* It was held by the majority of the court in the former decision of the *Slaughter House Cases* (16 Wall., 36, 57), that the 'privileges and immunities of citizens of the United States,' mentioned and referred to in the Fourteenth Amendment, are only those privileges and immunities which were created by the Constitution of the United States, and grew out of it, or out of laws passed in pursuance of it. I then held, and still hold, that the phrase has a broader meaning; that it includes those fundamental privileges and immunities which belong essentially to the citizens of any free government, among which Mr. Justice Washington enumerates the right of protection; the right to pursue and obtain happiness and safety."

In the case, *Ex parte Kuback* (85 Cal., 274), the exact question at issue in the case at bar was decided. The case of Kuback arose upon an application for a writ of *habeas corpus* by the petitioner, who had been tried and convicted under an ordinance of the City of Los Angeles, which, among other things, makes it a misdemeanor for any contractor to employ any person to work

more than eight hours a day. The court, in its opinion, said:

"It is claimed in support of the petition that this ordinance was unconstitutional and void. We think this objection is well taken. It is simply an attempt to prevent certain parties from employing others in a lawful business and paying them for their services, and *it is a direct infringement of the right of such persons to make and enforce their contracts.* If the services to be performed were unlawful or against public policy, or the employment were such as might be unfit for certain persons, for example, females or infants, the ordinance might be upheld as a sanitary or police regulation, but *we can not conceive of any theory upon which a city could be justified in making it a misdemeanor for any one of its citizens to contract with another for services to be rendered because the contract is that he shall work more than a limited number of hours per day.*"

In response to a resolution of the House of Representatives of the State of Colorado, requesting the Supreme Court of that State to give an opinion in writing for the guidance of the House upon the question whether a law providing that "eight hours shall constitute a day's work in all mines, factories, and smelters in this State" would be constitutional and legal, the court said (*In re Eight Hour Law*, 39 Pacific Rep. 328):

"*It is not competent for the legislature to single out the mining, manufacturing, and smelting industries of the State and impose upon them restrictions with reference to the hours of their employment, from which other employers of labor are exempt.* An act such as that proposed would be manifestly in violation of the constitutional inhibition against class legislation. *The bill submitted also violates the right of parties to make their own contracts—a right guaranteed by our bill of rights and protected by the Fourteenth Amendment of the Constitution of the United States.*"

Citing—

Low v. *Printing Co.*, 41 Neb.

The same court (*In re House Bill No. 203*, 39 Pacific Rep. 431) held that a proposed law of Colorado, in so far as it attempted to deprive persons of their right to fix by contract the manner of ascertaining compensation for mining coal, was in violation of the Fourteenth Amendment of the Constitution of the United States, the court using the same reasoning and citing the same authorities as in *Low* v. *Printing Co.* (*supra*), and *Frorer* v. *People* (141 Ill., 171), to which we shall come hereafter.

The opinion of the Supreme Court of Arkansas in the case of *Leep* v. *Railway Company* (58 Ark.) extends from page 407 to page 446 of said report, and is a very exhaustive review of this whole subject and of the authorities bearing upon the several constitutional questions involved. The case arose under an act prescribing, as a penalty for the withholding of an employé's wages by a railway company after his discharge, with or without cause, the continuance and payment, at the same rate, of such wages from the date of the dismissal until the wages so withheld were paid. This act was held to be unconstitutional and void. Among other things, on page 421, the court holds:

"When the subject of contract is purely and exclusively private, unaffected by any public interest or duty to person, society, or government, and the parties are capable of contracting, *there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.*"

The case of *State* v. *Goodwill* (33 W. Va., 179) is another which, by reason of the analogy of the questions there involved to those at issue in the case at bar, is deemed to be conclusive of the present case. There the defendant was convicted of a violation of a statute prohibiting persons engaged in mining and manufacturing from issuing for the payment of labor any order, or paper, except such as specified in the act. The court held this

law unconstitutional as being an abridgment of the privileges and immunities of the defendant, and also because it deprived him of his liberty and property without due process of law. In its opinion the court says:

"The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances, and *every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void.*"

Citing *Wally* v. *Kennedy*, 2 Yerg., 554.

* * * * * * *

"The vocation of an employer, as well as of his employé, is his property. Depriving the owner of property of one of its attributes is depriving him of his property under the provisions of the Constitution. (*People* v. *Otis*, 90 N. Y., 48.) *The right to use, buy, and sell property and to contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the Constitution.* If the legislature, without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect of one lawful trade or business, then it may prevent the prosecution of *all* trades and regulate all contracts."

The case of *Godcharles & Company* v. *Wigeman* (113 Pa. St., 431) is also, in the respect which we are now considering, analogous to the case at bar. This was an action of *assumpsit* by Wigeman against Godcharles & Company to recover wages as a puddler in the company's nail mill. During the time of his employment, Wigeman had asked for and received from his employers certain orders on different parties for the purchase of coal and other articles, which orders were duly honored by the parties on whom they were drawn and afterwards paid by Godcharles & Company. Plaintiff maintained that under the act of 1881, forbidding their issuance on account of

salary, etc., these orders could not be applied as a set off on his claim for wages. As to this branch of the case the court held:

"The orders given by the defendants and received by the plaintiff constituted a proper set off. *The 1st, 2d, and 4th sections of the act of June 29, 1881, are utterly unconstitutional and void, inasmuch as by them an attempt is made by the legislature to do what in this country can not be done, that is, to prevent persons who are sui juris from making their own contracts. The act is an infringement alike of the right of the employer and the employé. More than this, it is an insulting attempt to put the laborer under a legislative tutelage which is not only degrading to his manhood but subversive of his right as a citizen of the United States.* He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron and coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void."

In the case of *Commonwealth* v. *Perry* (155 Mass. 117), which wes an indictment under a statute of Massachusetts forbidding employers to impose fines upon, or withhold any part of the wages of, an employé engaged in weaving for imperfections that might arise during the process of weaving, the court held said statute unconstitutional, in its opinion saying:

"There are certain fundamental rights of every citizen which are recognized in the organic law of all our free American States, A statute which violates any of these rights is unconstitutional and void, even though the enactment of it is not expressly forbidden. Article 1 of the Declaration of Rights in the Constitution of Massachusetts enumerates among the natural, inalienable rights of men the right 'of acquiring, possessing, and protecting property.' Article 1, Sec. 10, of the Constitution of the United States provides, among other things, that no State shall pass any 'law impairing the obligation of contracts.' The right to acquire, possess, and protect property includes the right to make reasonable contracts, which shall be under the protection of the law.

"The manufacture of cloth is an important industry, essential to the welfare of the community. There is no reason why men should not be permitted to engage in it. Indeed, the statute before us recognizes it as a legitimate business into which anybody may freely enter. The right to employ weavers, and to make proper contracts with them is therefore protected by our Constitution; and a statute which forbids the making of such contracts or attempts to nullify them, or impair the obligation of them, violates the fundamental principles of right which are expressly recognized in our Constitution. If the statute is held to permit a manufacturer to hire weavers and agree to pay them a certain price per yard for weaving cloth with proper skill and care, it renders the contract of no effect when it requires him, under a penalty, to pay the contract price if the employé does his work negligently and fails to perform his contract."

Citing—

Godcharles v. *Wigeman*, 113 Pa. St., 431;
State v. *Goodwill*, 33 W. Va., 179;
In re Jacobs, 98 N. Y., 98;
People v. *Marx*, 99 N. Y., 337;
People v. *Gilson*, 109 N. Y., 389; and
Millett v. *People*, 117 Ill., 294.

In the case of *Shaver* v. *Pennsylvania Co.* (71 Fed. Rep., 931, 936), the court held unconstitutional an act of Ohio, which provided, in substance, that no railroad company, insurance company, or other association, shall demand, require, or enter into any contract, agreement or stipulation with any person about to enter, or in the employ of, any railroad company whereby such person stipulates or agrees to surrender or waive any right to damages against any railroad company thereafter arising from personal injury or death, etc. Among other things, the court says:

"The act under consideration, while it is general in its nature, applies only to railroad companies and their employés, and is not, therefore, general in its application and does not operate uniformly upon all classes of citi-

zens. Under this statute railroad companies are prohibited from making contracts which other corporations are allowed to make. * * * The act under consideration is certainly one which impairs the right of a large number of citizens of Ohio to exercise a privilege that is dear to all persons, namely, that of making contracts concerning their own labor and the fruits thereof, and, so far as it relates to such contracts already made, impairs their validity. The act seems to assume that a large class of citizens, namely, those employed by railroad corporations, are incapable of making contracts for their own labor."

In the case of *Tiburcio Parrott* (1 Fed. Rep., 481) there came under review a clause in the Constitution of California prohibiting all corporations of that State from employing Chinese, and also an act of the legislature of the State, passed to give effect to said constitutional provision. The defendant, convicted under said statute, sued out a writ of *habeas corpus* in the Federal court, and both judges agreed in holding the law void as in conflict with the Constitution of the United States. It was claimed on behalf of the State, in justification of said statute, that the State had the right to impose any conditions it pleased on its own corporations. The court held:

"The right to labor is, of all others, after the right to live, the fundamental, inalienable right of man * * * of which he can not be deprived under the guise of law, or otherwise, except by usurpation or force."

Without further comment upon this branch of the case, we pass to our next proposition, which is—

III.

This statute is also violative of the provision of the Fourteenth Amendment that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

It is not necessary here to enter upon any extended analysis of the provisions of the statute in question for the purpose of showing how *unequally* it affects, and how it discriminates against, all citizens of the State of Utah who are engaged in the business of mining, smelting, etc. This has already been done in what we have said under the head of police power. What we have already said is sufficient to show that, under the operation of the law, all other persons in the State, no matter in what business or occupation they may be engaged, are left entirely at liberty to make whatever contracts they please in respect of the character of the work to be performed, the amount to be paid therefor, and the number of hours that shall constitute a day's work in all occupations which by the law of the land are properly the subjects of contract.

The act in the case at bar, in sections 1 and 2, says that eight hours shall constitute a day's work *only* for those who are employed in underground mines or workings, smelters and other institutions for the reduction or refining of ores, and, in section 3, says that "any person, body corporate, agent, manager or employer who shall violate any of the provisions of sections 1 and 2 of this act shall be deemed guilty of a misdemeanor." This comparatively small class of people is in terms singled out by the legislature, made to bear this unjustifiable

and unequal burden, and deprived of liberties and rights of property that are enjoyed by every other citizen in the State who is engaged in any of the vast number of employments not enumerated in the act, and which by the law of the land they are protected in the enjoyment of and have the right in the courts to enforce.

This free and unrestricted right to engage in any calling that is permitted under the law, and to make necessary and lawful contracts with reference thereto, is one of the fundamental and inalienable rights of the citizen, without which, of course, no condition of social, commercial or financial prosperity could exist in a community or State that is in any way dependent on other communities or States for an interchange of commodities or commerce, and "must, therefore, be free in this country to all alike upon the same conditions. The right to pursue 'such callings' without let or hinderance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright, for 'the property which every man has is his own labor, and, as it is the original foundation of all other property, so it is the most sacred and inviolable.'" (*Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S., 746, the last clause of the above being quoted from Adam Smith's Wealth of Nations, Book 1, Chap. 10.)

It is no reply to this position to say, as was said by counsel for the State in the court below, that the right of contract of the plaintiff in error is not really abridged by this law because if as much work can not be accomplished by the same number of laborers in eight hours a day as in ten a greater number of men can be employed, or that two sets of workmen can be employed, the one to begin after the other has completed its allotted time.

Even if such a method would be as expedient (which, however, we do not admit), the statute is none the less vicious. The principle involved is the same. It still not only interferes with the right of the employer and employé to conduct their business in their own way and to make their own contracts, but, in substituting the will of the legislature in this respect for that of the parties to such contracts, it restricts the earnings of the employé to what he may be able to obtain from his employer for eight hours' work, and prevents him from earning the additional pay which he would be entitled to if he worked more than eight hours a day.

"Questions of power," says Chief Justice Marshall in the case of *Brown* v. *Maryland* (12 Wheat, 439), "do not depend on the *degree* to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it is placed. It is obvious that the same power which imposes a light duty can impose a very heavy one, one which amounts to a prohibition." So in the case at bar: if the legislature can prohibit the employment of laborers in mines and smelters for more than eight hours a day, it can prohibit such employment for more than one or any other number of hours; and it is no answer to this to say, as was said by counsel for the State in said case of *Brown* v. *Maryland*, that "*all* power may be abused, and that if the fear of its abuse is to constitute an argument against its existence, it might be urged against the existence of that which is universally acknowledged, and which is indispensable to the general safety." When we are inquiring whether an act such as the one at bar is within the prohibition of the Constitution, the question is not whether the State may so legislate as to accomplish what it may consider a beneficent result to a comparatively small class of laborers which it arbitrarily distinguishes and

separates from all others under the same general conditions, but whether the act is actually within the prohibition contained in the Constitution.

Again, in the case of *Boyd* v. *The United States* (116 U. S., 616, 635), opinion by Justice Bradley, this court held that the 5th section of the revenue act of 1874, authorizing a court of the United States to require the defendant, on motion of the district attorney, to produce in court his private books, invoices and papers, or else that the allegations of the district attorney should be taken as confessed, was unconstitutional and void as applied to suits for penalties, or to establish a forfeiture of the party's goods, it being repugnant to the Fourth and Fifth Amendments of the Constitution. On page 635 the court says:

"Though the proceeding in question is divested of many of the aggrivating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose. It may be that it is the obnoxious thing in its mildest and least repulsive form, but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. * * * *It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis.* We have no doubt that the legislative body is actuated by the same motives, but the vast accumulation of public business brought before it sometimes prevents it, on a first presentation, from noticing objections which have become developed by time and the practical application of the objectionable law."

Neither can it be said, as was held by the court below, that the plaintiff in error was not deprived of any of his rights as a citizen without due process of law, because he was duly tried and convicted of his offense according to the act of the legislature and the usual mode of trial and procedure in such cases. It is not of the *form* or *manner*

of his trial and conviction that the plaintiff in error is complaining. He has made no objection to the regularity, under the law as it exists, of any of the steps taken in the matter of his arrest, trial, and commitment. It is of the fact that he was made liable to such prosecution by the act itself and because of its unconstitutionality that he prayed for a writ of *habeas corpus*.

The due process of law of which the plaintiff in error claims to have been denied is the arbitrary deprivation by the legislature, without trial or constitutional right, of those liberties and rights of property which were possessed by him before the passage of the act, and which are possessed by all other citizens of the State engaged in any other business or occupation and in the enjoyment of which they are protected in the courts by the law of the land.

The terms "due process of law" and "law of the land" are synonymous. (*Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How., 276; *Davidson* v. *New Orleans*, 96 U. S., 101.) "Everything that may pass under the form of an enactment of the legislature is not the law of the land. * * * Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void." (Mr. Webster's argument in the case of the *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat, 581–2). "By the law of the land is most clearly intended the *general* law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the *general rules which govern society*," (*id.*), and obviously he can not be deprived of these attributes of citizenship except in conformity with the provisions of a law which deprives all alike, under the same conditions, of the same rights, and applies generally to all citizens.

This is repeated in the case of *Millett* v. *People* (117 Ill., 292), to which we shall again refer, where the court says:

"The words 'due process of law' in this connection" (referring to the above quoted clause in the Constitution) "are held to be synonymous with the words 'the law of the land.' (Cooley on Const. Lim., 1st Ed., p. 352.) *And this means general public law, binding upon all the members of the community, under all circumstances, and not partial or private laws affecting the rights of private individuals or classes of individuals.* (*Jones* v. *Reynolds*, 2 Tex., 251; *Loggenheimer* v. *People*, 13 N. Y., 432; *Vanzandt* v. *Waddell*, 2 Yerger, 269.")

An examination of the authorities will show how universally the courts have held laws of this character to be subversive of these fundamental and inalienable rights of citizenship and to deprive the citizen of these rights without due process of law.

Take, for example, one of the leading cases upon this subject, to wit, that of *Jacobs* (98 N. Y., 98, 105, *et seq.*), to which we have already referred. It is cited with approval and extensively quoted from in nearly all of the cases that we have found in any way bearing upon this question; and we, therefore, take the liberty of inserting in this brief a rather full extract from the opinion of the court. In that case, the petitioner was arrested on a warrant, issued under an act of the Legislature of New York, entitled, "An act to improve the public health by prohibiting the manufacture of cigars and the preparation of tobacco in any form in tenement houses in certain cases." The court held what is stated (on page 115), as follows:

"When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the *public* health,

that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able to see in this law, and we must, therefore, pronounce it unconstitutional and void."

Commencing at page 105 the court discusses several of the propositions advanced by the plaintiff in error in the case at bar, as follows:

"The constitutional guaranty that no person shall be deprived of his property without due process of law may be violated without the physical taking of property for public or private use. Property may be destroyed or its value may be annihilated; it is owned and kept for some useful purpose, and it has no value unless it can be used. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property can not be conceived, and hence any law which violates it or its value, *or takes away any of its essential attributes,* deprives the owner of his property.

"The constitutional guaranty would be of little worth if the legislature could, without compensation, destroy property or its value, deprive the owner of its use, or deny him the right to live in his own house, or to work at any lawful trade therein. If the legislature has the power under the Constitution to prohibit the prosecution of *one* lawful trade in a tenement house, then *it may prevent the prosecution of all trades therein.* Blackstone, in his classification of fundamental rights, says, 'the third absolute right inherent in every Englishman is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions without any control or diminution *save only by the law of the land.*' (1 Com., 138.) In *Pumpelly* v. *Green Bay Co.* (13 Wall., 166, 177), Miller, J., says: 'There may be such serious interruption to the common and necessary use of property as will be equivalent to a taking within the meaning of the Constitution.' In *Wynehamer* v. *People* (13 N. Y., 378, 398), Comstock, J., says: 'When a law annihilates the value of property and strips it of its attributes, by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the constitutional provision intended expressly

to shield personal rights from the exercise of arbitrary power.' In *People* v. *Otis* (90 N. Y., 48), Andrews, J., says: '*Depriving an owner of property of one of its attributes is depriving him of his property within the constitutional provision.*'

"So one may be deprived of his liberty and his constitutional rights thereto violated, without the actual imprisonment or restraint of his person. Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. *All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements, are infringements upon the fundamental rights of liberty, which are under constitutional protection.*"

The same thing, in substance, is held in the case of *Bertholf* v. *O'Reilly* (74 N. Y., 509, 515).

In the case of *Low* v. *Rees Printing Company* (41 Neb., 127, 136, *et seq.*), another of these eight hour laws was under consideration. The law there in question provided, in substance, that not exceeding eight hours should constitute a day's work for all classes of mechanics, servants and laborers, excepting those engaged in farm or domestic labor, and that for working any employé over the prescribed time the employer should pay extra compensation in geometrical progression, etc. The part of said act limiting the hours of employment, etc., was held to be unconstitutional, on the ground that it deprived citizens of liberty and property without due process of law, and for the reason stated in the following extract. The court, in its opinion, says:

"The first section of the statute under consideration provided what number of hours should constitute a legal

day's work for all classes of laborers, *excepting* those engaged in farm or domestic labor. The argument made in favor of the necessity that each day the excess over eight hours should be devoted to rest, recreation and mental improvement, loses much of its force when these very desirable benefits are by the statute restricted to certain defined classes of laborers, no one of which, independently of the statute, devotes so many hours to labor as the classes denied the protection of the statute. Legislation of this kind is always fraught with danger; hence arose the prohibition of special legislation when avoidable, which is found in our Constitution.

* * * * * * *

"In *State* v. *Sheriff of Ramsey County* (51 N. W., Rep., 112), the Supreme Court of Minnesota filed an opinion in which was used this language: 'In *Nichols* v. *Walter* (37 Minn., 264), it was held that the law was general and uniform in its operation which operates equally upon all the subjects within the class for which the rule is adopted, but that *the legislature can not adopt an arbitrary classification, though it be made to operate equally upon each one within the class; and the classification must be based upon some reason suggested by such a difference in the situation and circumstances of the subjects placed in different classes as to disclose the necessity or priority of different legislation in respect to them.*' * * * '*Such law must embrace all and exclude none whose condition and wants render such legislation necessary or appropriate to them as a class.*' (*Randolph v. Wood, 49 N. J. Law, 88.*) '*No arbitrary distinction between different kinds or classes of business can be sustained, the conditions being otherwise similar.*'

"There is perceived no reason why a resort to special legislation was necessary in respect of the subject-matter of the act with which we are now dealing."

In the case of *Ritchie* v. *People* (155 Ill., 98), the plaintiff in error was found guilty of a violation of the act of Pennsylvania of June 17, 1893, section 5 of which prohibits the employment of any female in any factory or workshop more than eight hours a day. In its opinion the court fully reviews many of the cases cited by us in

this brief, and reaffirms the doctrines upon which we contend that the statute in the case at bar is unconstitutional, after which the court says:

"Applying these principles to the consideration of section 5, we are led irresistably to the conclusion that it is an unconstitutional and void enactment. * * * Women employed by manufacturers are forbidden by section 5 to make contracts to labor longer than eight hours in a day, while women employed as saleswomen in stores, or as domestic servants, or as bookkeepers, or stenographers, or typewriters, or in laundries, or other occupations not embraced under the head of manufacturing, are at liberty to contract for as many hours of labor in a day as they choose. *The manner in which the section thus discriminates against one class of employers and employés and in favor of all others, places it in opposition to the guarantees hereinbefore discussed and renders it invalid.*

"But, aside from its partial and discriminating character, *this enactment is a purely arbitrary restriction upon the fundamental right of the citizen to control his or her own time or faculties.* It substitutes the judgment of the legislature for the judgment of the employer and employé in a matter about which they are competent to agree with each other. It assumes to dictate to what extent the capacity to labor may be exercised by the employé, and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period. *When the legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen or class of citizens, it transcends the authority entrusted to it by the Constitution, even though it imposes the same burden upon all other citizens or classes of citizens.*"

The court then cites and quotes from the cases of *Kuback* (85 Cal., 274), *Low* v. *Printing Co.* (41 Neb., 127), *In re Jacobs* (98 N. Y., 98), and others, and, after saying that the act there in question is claimed to be an exercise of police power (p. 110), and that the court's attention has been called to the statement in the text books to the effect that the legislature may limit the hours of

employment of women in manufacturing establishments, says:

"These statements appear to be based entirely upon the decision of the Supreme Court of Massachusetts in *Commonwealth* v. *Hamilton Mfg. Co.*, 120 Mass., 385. There it was held that an act providing that no woman over the age of eighteen years should be employed by any person, firm or corporation in any manufacturing establishment more than ten hours in any one day was valid. * * * The reasoning of the opinion in the Massachusetts case cited does not seem to be sound. It assumes that there is no infringement of the employer's right to contract, because he may employ as many persons or as much labor as he chooses in some other occupation than that specified in the statute. This is begging the question. *The right to contract would be valueless if it could not be exercised with reference to the particular subject-matter in hand.* If its exercise is forbidden between two persons competent to contract and concerning a lawful subject of contract, it is none the less abridged because other persons may be permitted to contract, or because the same persons may be at liberty to contract about some other matter."

The court concludes its discussion of this branch of the case by quoting from the case of Jacobs what we have quoted from said case.

In the case of *Millett* v. *People* (117 Ill., 294, *supra*), the defendant was convicted, under section 1 of an act of Illinois providing for the weighing of coal at mines, etc., of failure to cause to be furnished and placed adjacent to his coal mine a scale upon which to weigh the coal hoisted therefrom. The practice, before the passage of said act, had been to pay the miners at the rate of so much per box for the coal mined. The act required payment upon the basis of the weight of said coal, and one of the sections provided that all contracts for the mining of coal in which such weighing should be dis-

pensed with should be null and void. In its opinion the court says:

"What is there in the condition or situation of the laborer in the mine to disqualify him from contracting in regard to the price of his labor, or in regard to the mode of ascertaining the price? And why should the owner of the mine, or the agent in control of the mine, not be allowed to contract in respect to matters as to which all other property owners and agents may contract?

"'Every one,' says Judge Cooley (Const. Lim., 1st ed., p. 391), 'has a right to demand that he be governed by *general* rules, and a special statute that singles his case out to be regulated by a different law from that which is applied in all similar cases would not be legitimate legislation, but an arbitrary mandate unrecognized in free government.' Mr. Locke has said of those who make the laws: '*They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor—for the favorite at court and the countryman at the plow. And this may justly be said to have become a maxim in the law, by which may be tested the authority and binding force of legislative enactments.*' And, again, the same authority says (p. 393): 'The doubt might also arise whether a regulation made for one class of citizens, entirely arbitrary in its character, and restricting their rights, privileges, or legal capacities in a manner before unknown to the law, could be sustained. Distinctions in these respects should be based upon some reason which renders them important—like the want of capacity in infants and insane persons; *but if the legislature should undertake to provide that persons following some specified lawful trade or employment should not have the capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the bounds of legislative power, even if it did not come in contact with express constitutional provisions.* The man or the class forbidden the acquisition or enjoyment of property in the manner permitted to the community at large would be deprived of liberty in particulars of primary importance to his or their pursuit of

happiness.' * * * '*The right of every individual must stand or fall by the same rule of law that governs every other member of the body politic or land under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void.*' (*Walley's Heirs* v. *Kennedy*, 2 Yerg., 554.")

The case of *Frorer* v. *People* (141 Ill., 171) was an action for debt under the act of Illinois of May 28, 1891, entitled "An act to provide for the payment of wages in lawful money," etc., the first section of which makes it unlawful for a person or corporation, while in the business of mining or manufacturing, to engage or be interested, directly or indirectly, in keeping or controlling any truck store, shop, or scheme for the furnishing of supplies, tools, clothing, provisions, or groceries to employés. The court held that "it was not competent for the legislature to select operators of mines or manufacturers, and provide that they shall bear burdens not imposed on owners of other property and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make."

The court says:

"The privilege of contracting is both a liberty and a property right, and if A is denied the right to contract and acquire property in a manner which he has hitherto enjoyed under the law, and which B, C, and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract."

The case of *Ramsey* v. *People* (142 Ill., 380) was a criminal prosecution under an act requiring that owners and operators of coal mines, when the miner is paid on the basis of the amount of coal mined and delivered by him, to weigh the coal on pit cars before it is screened and to

pay on such weights. The court, upon the authority of *Frorer* v. *People* and *Milett* v. *People* (*supra*), held this statute to be unconstitutional.

In the case of *Braceville Coal Co.* v. *People* (147 Ill., 66) and *Ritchie* v. *People* (155 Ill., 98) the last-named cases were again affirmed and followed.

Again, in the case of *State* v. *Loomis* (115 Mo., 307), a statute making it a misdemeanor for any person, corporation or firm engaged in manufacturing or mining to pay its laborers by any check, memorandum, token or evidence of indebtedness not negotiable and redeemable at its face value in cash was held to be class legislation, and, as such, violative of the constitutional guaranty of due process of law, and void.

In *Austen* v. *Murray* (16 Pick., 121) an ordinance was considered which prohibited the bringing of bodies to town for interment without a license. It was obvious that the purpose of the ordinance was to prevent the interment of persons of a certain religious faith, and it was, therefore, held unconstitutional and void.

IV.

Conclusion.

From the above it will be seen that in Colorado, Nebraska, California, and Illinois, laws substantially similar to that in question in the case at bar have been held unconstitutional and void by the highest courts of those States, and that in Massachusetts, New York, Pennsylvania, Illinois, Ohio, Missouri, West Virginia, Maryland, Arkansas, Texas, Vermont, and many of the remaining States of the Union, laws so nearly analogous in principle to this statute that we deem them conclusive of the question, have likewise been so held.

Indeed, the three essential and indispensable elements of that perfectly free and unrestricted right of the citizen to contract with reference to all lawful pursuits in which he may desire to engage, which is guaranteed and protected by the Constitution of the United States, and to which we have above pointed, namely, the right of the employer and the employé to agree upon (1) the character of the services to be performed, (2) the amount to be paid for such service, and (3) the number of hours per day during which the service is to continue, are constantly grouped together in the authorities, and are manifestly so inseparably connected with each other that the destruction or abridgment of one is a destruction or abridgment of the whole of said right of contract; and, therefore, any decision holding that such destruction or abridgment of one of these elements is unconstitutional must necessarily apply to and control all questions as to the constitutionality of the others.

We have nowhere found a decision of any court upholding such a law as the one here involved, or any law analogous thereto, except in the cases we have enumerated, and which we contend are clearly distinguishable from the present case, namely, (*a*) cases where the law was enacted for the purpose of limiting the hours of employment of *public employés*, in which case this court has held that such a law is valid because merely in the nature of a direction from a principal to his agent (*b*) cases where such laws are enacted with regard to employments affected with a *public interest*, and (*c*) in the case of statutes which, although limiting the hours of employment, are enacted for the protection of the health or safety of women, children, insane persons, and the like, which last are generally, though not universally (155 Ill., 98), regarded as a valid exercise of the police power for the reasons we have already stated.

Relying, therefore, upon these authorities, and upon

the indication of the opinion of this court above quoted from the case of the *United States* v. *Martin* (94 U. S., 400), we respectfully submit that the judgment and order of the court below remanding plaintiff in error to the custody of the defendant, and denying his discharge from such custody, should be reversed.

JEREMIAH M. WILSON,
For Plaintiff in Error.

WASHINGTON, D. C.,
August 20, 1897.

C. W. Bennett,
R. Harkness,
A. Howat, and
W. A. Bradley,
Of counsel.

No. 261.

Reply Brief of Wilson & Bennett for P. C.

FILED.
OCT 18 1897
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

Filed Oct. 18, 1897.

ALBERT F. HOLDEN, Plaintiff in Error,

vs.

HARVY HARDY, Sheriff of Salt Lake County, Utah.

No. 261.

BRIEF IN REPLY TO BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Counsel for defendant in error in the above-entitled case, in their brief in support of the constitutionality of the statute of Utah involved herein, have in some instances evidently misapprehended, and therefore misstated, our positions and contentions with regard to several of the questions discussed by us in the brief in behalf of the plaintiff in error; and therefore, in order that no confusion or mistake may result from these inaccuracies in the brief of counsel for the defendant in error, we deem it due to the court, as well as to ourselves, that we should here call attention to such of these erroneous statements as we think it important to notice. This we will do as concisely and briefly as possible.

I.

On page 6 of the said brief of counsel for defendant in error it is said:

"By this language" (referring to the proposition stated at the head of page 6 of the brief for plaintiff in error) "we understand counsel to adopt the rule which is sustained by many decisions, viz., that if it is in exercise of the police power—if it can reasonably be construed as a provision for the health, safety, or general welfare—it will not be held invalid because of a conflict with the Constitution."

This statement of our position is inaccurate. It seems to us that upon a most casual reading of our discussion of this matter on pages 6 to 21 of our brief, our meaning will be found to be perfectly plain. Our proposition is that the Constitution of the United States is the supreme law of the land, and paramount to any enactment of a State legislature, whether adopted as a health measure or not, which is in conflict with any of its provisions.

To this proposition we cited in our brief several authorities. On page 8 we quote the language of Justice Field in the *Slaughter House Cases* (16 Wall., 87), where he says:

"Under the pretense of prescribing a police regulation, the State can not be permitted to encroach upon any of the just rights of the citizen which the Constitution intended to secure against abridgement."

We also quoted the following language from the opinion of the court in the case *in re Jacobs* (98 N. Y., 107):

"But the power" (the police power), "however broad and extensive, is not above the Constitution. When it speaks, its voice must be heeded. It furnishes the supreme law * * * and, so far as it imposes restraints, the police power must be exercised in subordination thereto."

Many authorities might have been added to these, but we did not consider it necessary to encumber our brief with a further citation upon a point so fundamental and well settled. From the opinion of Chief Justice Marshall in the case of *M'Culloch* v. *Maryland* (4 Wheat., 405, 406), down to the case of *Counselman* v. *Hitchcock* (142 U. S., 457), we have found no dissent from this proposition in the opinions of this court. We will, therefore, add to this citation but one quotation, from the opinion of Justice Harlan in the case of *Mugler* v. *Kansas* (123 U. S., 623–661), in which this principle is so unequivocally stated that counsel for the defendant in error can not well have any further doubt in regard to our position in this matter. It is as follows:

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the State. There are, of necessity, limits beyond which legislation can not rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, *the courts must obey the Constitution rather than the law-making department of the Government*, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To

what purpose,' it was said in *Marbury* v. *Madison* (1 Cranch, 137–176), are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the person on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, under a solemn duty—to look at the *substance* of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. *If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety* has no real or substantial relation to those subjects, *or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.*"

II.

Counsel for defendant in error, on page 7 of their said brief, also say that said statute is not claimed to have the effect of impairing the obligation of pre-existing contracts. This statement of counsel for defendant in error is also erroneous, the holding of the court below that said law did not impair the obligation of such contracts being the basis of the third assignment of error set forth on the 4th page of our brief.

While it may be admitted that in the present case it does not affirmatively appear from the Record that the contract of employment, which was the basis of the

proceeding herein, was in existence at the time of the passage of said act, and was to have continued thereafter for any length of time, still we insist that, even if said act did not impair the obligation of the contract in question in the present case, it is, nevertheless, manifest that it did and does now impair the obligation of all contracts, such as the one involved herein (not only of the plaintiff in error, but of all the other mine owners in the State), that actually existed before and at the time of the passage of said act and which were to continue in force thereafter; and we submit that said statute should, therefore, be declared unconstitutional and void.

We do not consider it necessary to elaborate upon so plain a proposition as that comprehended by said assignment of error, to wit: that a statute which makes illegal an employment under a contract which was perfectly legal and proper at the time it was made, and which thus destroys the equitable and legal rights of the parties thereto, either to compel its performance or to obtain redress for a breach thereof, is unconstitutional as impairing the obligation of such contract.

This principle is fully stated and many authorities in support thereof cited in Cooley's Constitutional Limitations (6th edition, p. 344) as follows:

"The obligation of a contract, it is said, consists in its binding force on the party who makes it. This depends on the laws in existence when it was made; these are necessarily referred to in all contracts and form a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no other standard by which to ascertain

the extent of either than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other the right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

(Citing *McCracken* v. *Hayward*, 2 How., 608–612; *Ogden* v. *Saunders*, 12 Wheat., 213, 257, 259, 302, and many other cases to the same effect.)

"It is the civil obligation of contracts which the Constitution is designed to reach; that is, the obligation which is recognized by, and results from, the law of the State in which it was made. If, therefore, a contract when made is by the law of the place declared to be illegal, or deemed to be a nullity, or a *nude pact*, it has no civil obligation, because the law in such cases forbids its having any binding efficacy or force. It confers no legal right on the one party and no corresponding legal duty on the other. There is no means allowed or recognized to enforce it, for the maxim is *ex nudo pacto non oritur actio. But when it does not fall within the predicament of being either illegal or void, its obligatory force is coextensive with its stipulations.*"

(Citing many cases in Note 2.)

From what has been already said in our former brief concerning this whole subject, and especially concerning the actual operation of this statute with reference to the

subjects to which it relates and the contracts affected thereby, it seems to us to be clear that the principle stated in the above quotation from Cooley is fully applicable to the statute here in controversy, and we will not, therefore, encumber this brief with any further citation of authorities or argument with respect to the matter.

JEREMIAH M. WILSON,
For Plaintiff in Error.

C. W. BENNETT,
R. HARKNESS,
A. HOWAT,
W. M. BRADLEY,
Of Counsel.

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM 1896.

ALBERT F. HOLDEN, Plaintiff in Error. vs. HARVEY HARDY, Sheriff of Salt Lake County, Utah.	No. 655
and	
ALBERT F. HOLDEN, Plaintiff in Error. vs. HARVEY HARDY, Sheriff of Salt Lake County, Utah.	No. 658

IN ERROR TO THE SUPREME COURT

OF THE STATE OF UTAH.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

These cases involve the constitutionalty of the statute of Utah approved March 30, 1896, entitled

"An Act regulating the hours of employment in underground mines, and in smelting and ore reduction works." The statute is as follows:

"SEC. 1. The period of employment of working men in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SEC. 2. The period of employment of working men in smelters and all other institutions for the reduction or refining of ores or metals shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SEC. 3. Any person, body corporate, agent, manager or employer, who shall violate any of the provisions of Sections I and II of this act shall be deemed guilty of a misdemeanor."

The plaintiff in error was convicted in the first case of a violation of Section I, upon the charge that he "unlawfully did employ one John Anderson to work and labor as a miner in the underground workings of the Old Jordan Mine * * for the period of ten hours each day * * and on the date aforesaid and continuously since said time has unlawfully required said John Anderson under and by virtue of said employment, to work and labor in the underground workings of said mine aforesaid for the period of ten hours each day, and that said employment was not in case of an emergency etc."

In the second case the plaintiff was convicted of a violation of Section II of said act.

In each case he was sentenced to pay a fine of $50.00 and costs and to imprisonment in the county jail for fifty-seven days or until said fine and costs

were paid. Having been committed to the custody of the sheriff, plaintiff in error filed a petition in the Supreme Court of Utah for a writ of *habeas corpus* which was denied, and the cases were thereupon brought to this Court by writ of error.

The assignments of error in the two cases present similar questions, and the cases may be considered together.

The assignments of error are based upon the claim that the statute in question is in violation of the United States Constitution, and that therefore the convictions were unlawful. These constitutional objections are presented and discussed in plaintiff's brief under three heads, viz:

"1st. The statute of Utah involved herein is in conflict with the Constitution of the United States, and is not a valid exercise of the police power of the State." (p. 6 of brief.)

"2nd. The statute in question abridges privileges and immunities of the plaintiff in error to which he is entitled as a citizen of the United States." (p. 21 of brief)

"3rd. This statute is also violative of the provisions of the Fourteenth Amendment, that no state shall deprive any person of life, liberty or property without due process of law, or deny to any person the equal protection of the laws." (p. 32 of brief).

In answering plaintiff's argument we will, so far as the similarity of the questions permit, follow the same order.

ARGUMENT.

RULES OF CONSTRUCTION.

Before taking up the various contentions of counsel we would call the attention of the Court to the well settled rules by which the constitutionality of a statute is determined.

A rule of construction in such cases that has been well settled by an unbroken line of able decisions of this and other Courts is, that when the constitutionality of a statute is questioned the presumption always exists in favor of the validity of the law until its unconstitutionality is shown *clearly and beyond doubt*, and if there be a doubt in the mind of the court it must be determined in favor of the validity of the statute.

"The right of the judiciary to declare a statute void and to arrest its execution is one which, in the opinion of the court, is coupled with a responsibility so grave that it is never to be exercised except in very clear cases. One department of the government is bound to presume that another has acted rightly. The *party who wishes us to pronounce a law unconstitutional* takes upon himself the *burden* of *proving beyond a doubt* that it is so."

Erie R. R. vs. Casey 26 Pa. St. 287.

Powell vs. Com. 114 Pa. St. at page 270.

"It has been truly said that the presumption is in favor of every legislative act, and that the whole

burthen of proof lies on him who denies its constitutionality."

Marshall, C. J. in Brown vs. Maryland 12 Wheat. 436.

"It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which a law is passed, to presume in favor of its validity, until its violation of the constitution is *proved beyond all reasonable doubt.*"

Ogden vs. Saunders 12 Wheat. 270

"Only when it violates the constitution *clearly, palpably, plainly, and in such manner as to leave no doubt or hesitation in our minds.*"

Sharpless vs. Mayor 59 Am. Dec. 782.

"Every statute is presumed to be constitutional. The courts ought not to declare one to be unconstitutional unless it is clearly so. If there is doubt, the expressed will of the legislature should be sustained."

Munn vs. Illinois 94 U. S. 126.

To the same effect and approving the above language are the following:

State vs. Coal Company 36 W. Va. 835-838.
Penn. R. R. vs. Riblet 66 Pa. St. 164.
University vs. Barnard 57 Cal. 612.
Sinking Fund Cases 99 U. S. 718.
State vs. Ah Chew 40 Am. Rep. 490.
Fletcher vs. Peck 6 Cranch 87
Ah Lim vs. Territory 1 Wash. St. 159.
State vs. Addington 77 Mo. 110.
State vs. Laughlin 75 Mo. 147.
Humes vs. Railway 82 Mo. 230-232.
Leep vs. Railway 58 Ark. 414-415.
Newland vs. Marsh 19 Ill. 385.

That the law may seem unreasonable, oppressive

or absurd, or that there may be objections to its policy or expediency, is not sufficient to justify its judicial repeal. These are matters for which the legislature must shortly answer to its constituents who can correct them. It must be in direct conflict with some expressed prohibition of the constitution.

Mayor of New York vs. Miln 11 Peters 138.
Cooley vs. Const. Lim. 164.
Nathan vs. Alabama 8 How. 73.
Passenger cases 7 How. 402.
Sharpless vs. Mayor 21 Pa. St. 147-161-162,
Pattison vs. Yuba 13 Cal. 175-182.
Leonard vs. Wiseman 31 Md. 201.
Com. vs. McWilliams 11 Pa. St. 61-70.
Davis vs. State 3 Lea 376.
Varrick vs. Smith 5 Paige 160.
Williams vs. Commack, 27 Miss. 209.
Passenger cases 7 How. 287.
Ah Lim vs. Territory 1 Wash. St. 162.
People vs. Gillson 109 N. Y. 406.

ANSWER TO PLAINTIFFS CONTENTION.

Answering the objections of plaintiff in error in the order in which they are presented and discussed in the brief we say:

FIRST.

The first objection (page 6 of plaintiff's brief) is that the statute of Utah is in conflict with the Constitution of the United States, and is not a valid exercise of the police power of the state.

By this language we understand counsel to adopt the rule which is sustained by many decisions, viz: That if it is in exercise of the police power,—if it can reasonably be construed as a provision for the health,

safety or general welfare,—it will not be held invalid because of a conflict with the constitution.

Before subjecting the statute to the scrutiny necessary to decide whether it is a police regulation, a foundation must be laid by the person attacking the statute, by showing clearly that it is in conflict with the Federal Constitution.

To clear the way we would here call attention to plaintiff's claim, as we understand it from his brief. It is not claimed by him that it is in conflict with any of the powers expressly delegated to Congress, such as the regulation of interstate commerce, coinage of money, and the like. It is not claimed to have the effect of impairing the obligation of a pre-existing contract.

Indeed the only claim of a violation of a right protected by the Federal Constitution is briefly this: That as a citizen of the United States the plaintiff, Holden, is guaranteed the right to enter into any private contract he may choose if he can gain the consent of the other party to the contract; and that the State legislature is prohibited by the XIV Amendment from in *anywise* limiting the kind of contract he may enter into or regulating its terms or conditions in *any respect*.

This claim is presented by counsel under three heads but they all express the same idea and contention.

As these will be discussed in the order in which they are presented by plaintiff's brief, we will, under

this head, suppose that plaintiff has sustained the burden that rests with him and has pointed out the clause of the constitution which insures this right of exemption from legislative interference with the subject or terms of his contracts. And will take up with counsel the question of whether the subject of this Statute is within the scope of the police power.

While the burden here, as it is in pointing out the clause of the constitution violated, is with the plaintiff, to show that this statute does not relate to a subject within the police power, we feel that if the burden were the other way we might sustain it by reference to the facts surrounding its passage. Before referring to the citations in plaintiff's brief, we would call attention to these facts.

The decision of the Supreme Court of Utah which is a part of the record here shows that the industry which forms the subject of this statute—labor in underground mines and in smelters—is one of unusual danger to the health and safety of those employed therein.

The opinion of the Utah Supreme Court in the case at bar refers to some of the unhealthful features of underground mining in the following language, (See 46 Isac. Rep. at page 758, where this opinion is reported):

"The effort necessary to successful mining if performed upon the surface of the earth, in pure air

and in the sunlight, prolonged beyond eight hours, might not be injurious, nor affect the health of able bodied men. When so extended beneath the surface, in atmosphere laden with gas, and sometimes with smoke, away from the sunlight, it might injuriously effect the health of such persons. It is necessary to use artificial means to supply pure air to men laboring any considerable distance from the surface. That being so, it is reasonable to assume that the air introduced, when mixed with the impure beneath the surface, is not as healthful as the free air upon the surface. The fact must be conceded that the breathing of pure air is wholesome, and the breathing of impure air is unwholesome. We cannot say that this law, limiting the period of labor in underground mines to eight hours each day, is not calculated to promote health; that it is not adapted to the protection of the health of the class of men who work in underground mines."

And in the second case, referred to as the "Mill case," the Utah Court noticing some of the dangers connected with that industry say: (46 Pac. Rep. at pages 1105-1106.)

"The conditions with respect to health of laborers in underground mines doubtless differ from those in which they labor in smelters and other reduction works on the surface. Unquestionably, the atmospheric and other conditions in mines and reduction works differ. Poisonous gases, dust, and impalpable substances arise and float in the air in stamp mills, smelters, and other works in which ores containing metals, combined with arsenic or other poisonous elements or agencies, are treated, reduced and refined, and there can be no doubt that prolonged effort day after day, subject to such conditions and agencies,

will produce morbid, noxious, and often deadly effects in the human system. Some organisms and systems will resist and endure such conditions and effects longer than others. It may be said that labor in such conditions must be performed. Granting that, the period of labor each day should be of a reasonable length. Twelve hours per day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight. Such a period was deemed reasonable.

* * * *

The law in question is confined to the protection of that class of people engaged in labor in underground mines, and in smelters and other works wherein ores are reduced and refined. This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters, and other works for the reduction and refining of ores. Therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments. Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order, or promote the general welfare, we must resolve them in favor of the right of that department of government."

That this is generally recognized as dangerous to health and safety of those so employed is also shown by the Act of Congress commonly known as the Utah Enabling Act, approved July 16, 1894. Sec. XII of that act donates 50,000 acres of land "for a miners hospital for disabled miners."

The Constitutional Convention of Utah, composed of those who were familiar with its risks and dangers, likewise recognize it as a subject requiring special attention, and by Art. XVI Sec. VI of the Utah Const. say that the "Legislature shall pass laws to provide for the health and safety of employees in * * smelters and mines."

Again by the acts of the Legislature both before and after the Constitutional Convention, in its various provisions concerning the inspection of mines, and since Statehood by appropriations and laws for miners hospitals.

The frequent mention by the courts of many states of mining as a proper subject for health and safety regulations, will be noticed hereafter.

The investigations of hospital records and health statistics concerning labor in mines and smelters, by the Legislature before the passage of this act; the general discussion of its merits and advantages, its approval by most mine owners and by all employees, the numerous petitions presented to the Governor to approve the act signed by many hundreds of miners and smelter employees and citizens of the state who were familiar with the dangerous character of the employment; the fact that experience of mining and smelter employers and employees showed that in those particular industries more labor could be done in a year when employees worked eight hours per

day than when they attempted to work ten hours per day;—are matters not appearing in the record, but were facts of which the court below very properly took notice as facts of general knowledge. The plaintiff made no claim and offered no testimony—expert or of other character—to show that ten hours of such work per day was not injurious to health etc. Under the rule adopted in cases cited by counsel, plaintiff might have made such showing if such were the facts.

The employment being one where it was so obviously apparent to the Court that long hours of labor will "soon exhaust the strength of the laborer and render him a permanent invalid" and a burden upon the public, it may be proper to test the statute by the definitions of the subjects of police regulation cited by counsel for plaintiff.

The first case cited by counsel is worthy of special consideration in that it contains an able discussion of the location of powers under the system of Government resulting from the adoption of the Federal Constitution. This case (Mayor of New York vs. Miln. 11 Peters 102) involved the constitutionality of an Act of New York providing certain regulations as to emigrants, and was designed to protect the State from the threatened burden of supporting the large number of poor people coming from foreign countries.

The defendant contended that the act of New York was unconstitutional as regulating foreign commerce.

(Page 130-131). The plaintiff contended that even if it affected commerce it was valid as a proper exercise of the police power which is not surrendered to congress.

The Court, by Barbour J., says (page 132). "If, as we think it be a regulation, not of commerce, but police, then it is not taken from the states." The court proceed with a discussion of what powers were surrendered and what retained by the states, and say "The powers reserved to the several states will extend to all the objects which in the ordinary course of affairs concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the state."

And quoting from 9 Wheat. 203, which concerned an inspection law say:

"They form a portion of that immense mass of legislation which embraces everything within the territory of the state, not surrendered to the general government, all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, etc., etc."

The opinion reviews the two cases of Gibbons vs. Ogden, 9 Wheat. 1 and Brown vs. Maryland, 12 Wheat 419, showing that they came within the powers surrendered, viz: Regulation of commerce and taxing imports.

The Court holds that the N. Y. act was not such a

regulation of commerce as to be objectionable, but say: (page 138).

"But we do not place our opinion on this ground. We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a state has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation; where that jurisdiction is not surrendered or restrained by the constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of the state, to advance the safety, happiness, and prosperity of its people and to provide for its general welfare, by any and every act of legislation, which it may deem to be conducive to these ends; where the powers over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all the powers which relate to merely municipal legislation, or what may perhaps, more properly be called internal police, are not thus surrendered or restrained; and that consequently, in relation to these the authority of a state is complete, unqualified, and exclusive * * * We would say, that every law came within this description which concerned the welfare of the *whole people* of the state, or *any individual* within it; whether it related to their rights, or their duties; whether it respected them as *men*, or as *citizens* of the *state;* whether in their public or *private* relations; whether it related to the rights of persons, or of property, of the *whole people* of the state or of *any individual within it;* and whose operation was within the territorial limits of the state, and upon the persons and things within its jurisdiction."

At page 141, the Court say that obviously the act in question was "passed with a view to prevent her

citizens from being oppressed by the support of multitudes of poor persons, who come from foreign countries without possessing the means of supporting themselves. * * * It is the duty of the state to protect itself from this evil. * * * We should, upon principle, say that it had the right to do so." And at page 142, "We think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, etc., as against the physical pestilence, etc."

The case of Stone vs. Mississippi 101 U. S. 814, decided in 1879, cited by counsel, is equally emphatic in its declaration that this power was retained by the states, and that it "extends to all matters affecting the public health or the public morals." At page 819, Waite, C. J. says: "No legislature can bargain away the public health or the public morals * * Government is organized with a view to their preservation and cannot divest itself of the power to provide for them. For this purpose the largest legislative discretion is allowed." And quoting from Chief Justice Marshall in 4 Wheat. 629: "That the framers of the Constitution did not intend to restrain states in the regulation of their civil institutions adopted for internal government, and that the instrument they have given us is not to be so construed." By this decision the Act of Miss. of 1870 revoking the charter granted the lottery company granted in 1867, was upheld.

Lake View vs. Rose Hill Cemetary, 70 Ill. 192.

Decided 1873.

Involves constitutionality of statute of Ill. limiting the ground which might be used by the cemetary

company. The State had granted a charter to the company in 1860 authorizing this company to purchase this ground and use same for cemetary purposes. The late Act sought to confine the company to a use of only a portion of the ground for such purpose. The court (four of the Judges) held that the later Act impaired the obligation of the contract created by the charter and was therefore unconstitutional; there being no necessity shown why for the public health the rights originally granted should be limited.

The minority of the Court (with whom the Chief Justice Breese and Craig J. concurred) held that it was the province of the Legislature to determine when the emergency arose, and that in the exercise of its police power it could change the charter provision for what, in its judgment was for the good of the public health.

Both opinions express, in similar language, the large scope of the police power.

Railroad vs. Husen, 95 U. S. 465.

Involved the validity of a statute of Missouri directly in conflict with the surrendered power to regulate inter-state commerce. The court holds that a power so *expressly surrendered* cannot be exercised by the state under the guise of a police regulation *except* in cases of "vital necessity;" and where such palpable conflict exists the court will retain the right

to inquire whether the vital necessity exists. As to the scope of the police power the Court quotes with approval the language of Judge Redfield in the case of Thorp vs. Railroad, 27 Vt. 149, and say: "It may exclude from its limits convicts, paupers, idiots and lunatics and *persons likely to become a public charge etc.*"

The Act of Missouri there in question prohibited the shipment into the state of any Texas cattle between March 1st and Nov. 1st of each year, whether they were in a healthy condition or not. The Court concludes that there was not such "vital necessity" for such law as to justify so violent an encroachment upon the power to regulate commerce which had been expressly surrendered to Congress, and therefore hold the statute void.

Thorp vs. Railroad, 27 Vt. 140.

Involved constitutionality of a statute of Vermont requiring railroad corporations to place a cattle guard at crossings. HELD to be a proper exercise of police power. Speaking of this power, Redfield J. says:

"It has never been questioned, so far as I know, that the American Legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restrained by written constitutions. That must be conceded, I think, to be a fundamental principle in the political organization of the American States. We cannot well comprehend how, upon principle, it shoud be otherwise. The people must of course, possess all legislative power originally. They have com-

mitted this in the most general and unlimited manner to the several State Legislatures, saving only such restrictions as are imposed by the constitutions of the United States, or of the particular State in question," (page 142 and 143). And at page 149,

"We think the power of the legislature to control existing railroads in this respect, may be found in the general control over the police of the country, which resides in the law making power in all free States, and which is, by the fifth article of the Bill of Rights of this state, expressly declared to reside perpetually and inalienably in the legislature; which is, perhaps, no more than the enunciation of a general principle applicable to all free states, and which cannot, therefore, be violated so as to deprive the legislature of the power, even by express grant to any mere public or private corporation * * * That is a responsibility which legislatures cannot divest themselves of if they would. This police power of the state extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property in the state. According to the maxim, "*sic utere tuo ut alienum non laedas*," which being of universal application, it must of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others." And at page 150:

"There is also the general police power of the state, by which persons and property are subjected to all kinds of restraints snd burdens, in order to secure the general comfort, health, and prosperity of the state, of the perfect right, in the legislature to do which no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned."

It was objected by counsel for the railroad that

this statute was "an attempt to control the obligation of one person to another in matter of merely private concern" (see page 151); and the Court says: At page 152.

"But the argument that these cattle guards at farm crossings are of so private a character as not to come within the general range of legislative cognizance, seems to me to rest altogether upon a misapprehension. It makes no difference how few or how many persons a statute will be likely to affect. If it professes to regulate a matter of public concern, and is in its terms general, applying equally to all persons or property coming within its provisions, it makes no difference in regard to its character or validity, whether it will be likely to reach one case or ten thousand. A statute requiring powder mills to be built remote from the villages or highways, or to be separated from the adjoining land by any such muniment as may be requisite to afford security to others' property or business, would probably be a valid law if there were but one powder mill in the state, or none at all, and notwithstanding the whole expense of the protection should be imposed upon the proprietor of the dangerous business. And even where the state legislature have created a corporation for manufacturing powder at a given point at the time, remote from inhabitants, if in process of time dwellings approach the locality so as to render the further pursuit of the business at that point destructive to the interests of others, it may be required to be suspended or removed or secured from doing harm at the sole expense of such corporation." Citing 7 Cowen 604 and 5 Cowen 538.

And quotes from language of Marshall in 4 Wheaton. 629.

In re Jacobs, 98 N. Y. 98.

This case involves the constitutionality of an act of N. Y. which prohibited cigar making in a tenement house where more than three families lived who lived independently of one another and did their cooking on the premises; but if they did not cook there (though there might have been a half dozen families), or if they lived together, or if there were only three families, no matter what their numbers, the act did not apply. Nor did it apply to the first floor if it was used, or if a part of it was used, for the sale of cigars and tobacco. The act was also limited to New York and Brooklyn.

Upon no theory could it be regarded as a provision for the health or safety of either those engaged in the business or of the general public. And the Court so holds,

At page 110: "Generally it is for the legislature to determine what laws and regulations are needed to protect the public health and secure public comfort and safety, and while its measures are calculated, intended, convenient and appopriate to accomplish these ends, the exercise of its discretion is not subject to review by the courts. But they must have *some* relation to these ends * * * If it passes an act *ostensibly* for the public health and thereby destroys or takes away the property of a citizen or interferes with his personal liberty, then it is for the courts to scrutinize the act, and see whether it *really* relates to and is convenient and appropriate to promote the public health."

(The natural inference from this language is, that if in such scrutiny the Court can see that it is for the public health, etc., then the right of the citizen may be invaded. This under the maxim "*salus populi suprema lex.*" And if there is no interference with a constitutional right the Court will not inquire at all, but will leave the question of reasonableness etc., to the legislature, where it belongs, to be regulated according to the maxim "*sic utere etc.*")

On page 113, the Court says: "That it was not claimed in this case that the manufacture of cigars etc., was harmful."

And following the view in Austin vs. Murray 16 Pick. 121-126, viz: "The law will not allow the rights of property to be invaded under the guise of a police regulation for the promotion of health, *when it is manifest* that such is not the object and purpose of the regulation," hold the New York Act void.

Watertown vs. Mayo 109 Mass. 315.

The Court decided that the statute, there in question, was a lawful exercise of the police power of the state, using the following language in a portion of its opinion:—

"All rights to the use and enjoyment of property secured by the Constitution of the United States or of this commonwealth, are subject to regulations under that power known as the police power of the state, which, like the power of taxation, is necessary to its

existence, and which is implied in the idea of free civil government."

"It is defined by Blackstone to be that power which concerns 'the due regulation and domestic order of the kingdom, whereby all individuals of the state, like members of the well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood and good manners, and to be decent, industrious and inoffensive in their respective stations.'

4th Blackstone Com., 162.

"It has its foundation in that maxim of all well ordered society, which requires every one to use his own so as not to injure the equal enjoyments of others having equal rights of property. Laws passed in the legitimate exercise of this power are not obnoxious to constitutional provisions, although in some measure interfere with private rights merely because they do not provide compensation to the individual whose liberty is restrained. He is presumed to be rewarded by the common benefit secured.'

"*The law most wisely interferes to the protection of the public health by preventing in advance threatened and probable injury. Exposure to danger is itself an injury.* Nor as a police regulation is it essential that its provisions should be applicable to all parts of the common-wealth."

Coe vs. Schultz 47 Barb. 65.

An injunction was prayed against the Metropolitan Board of Health from discontinuing the business of plaintiff, viz: manufacturing superphosphate of lime, which, in the opinion of the Board, was a nuisance.

The plaintiff claimed that it would be taking his property without "due process of law."

The injunction was denied by Sutherland, J., who held that the abatement of a nuisance without judicial proceeding was due process of law.

Commonwealth vs. Alger, 7 Cush. 53.

This was an indictment against the defendant for a breach of the statute of Mass., establishing the commissioner's lines, so called, in the Harbor of Boston, by erecting a building, and maintaining a wharf over and beyond those lines in said harbor. The facts were, that the defendant was for more than 30 years the owner of land on 4th Street in South Boston. The land in question bounded on the arm of the sea lying between Boston proper and South Boston, in and through which the sea ebbs and flows from a bay above, called South Bay. Defendant had partially constructed a wharf on his property, but in the meantime the legislature of Mass., enacted a law proscribing and limiting the building into the sea of any wharf or other obstruction beyond a certain line which had been established by commissioners. Defendant claimed the law in question unconstitutional. Held, by the Supreme Court of Massachusetts constitutional.

From the language and decisions in the foregoing cases it would seem hardly necessary for us to cite other cases illustrating our contention that the

subject and object of the Utah statute are within the scope of the police power. It relates to a question of health, and, as remarked by the Utah Court, it is confined to those departments of the industries affected which are peculiarly dangerous. It is therefore manifest that it was intended as a health regulation, primarily, and for the general welfare of the whole people by preventing a burden that would otherwise come within a few years or months.

Counsel's contention that to be valid a police regulation must affect and be for the benefit of the *whole community*, is correct only in the sense that the whole community is affected and benefited by protecting a part. Few laws reach directly the whole community. We have seen no decision holding that a law must reach and affect directly every citizen.

Nor is it necessary as contended by counsel that because two industries resemble in some particular, that all regulations concerning one must apply to the other. The mere fact that two men are employers does not require that all laws shall affect them equally.

On such a test few laws, if any, could stand. Indeed, we will be surprised if Counsel can name any statute that affects equally every person in the state. A search through the statute books for such a law will show the error of such contention, for compilations of statutes are little more than a collection of what would be called "special legislation" under Counsel's

contention. Each law is designed, and necessarily so framed as to correct some particular evil or to enforce some particular right. While, as a whole, the statutes furnish fair protection against wrong, each statute by itself covers but a small field and directly affects but few persons.

In *ex parte* Smith et al, 38 Cal. 710, the Court speaks of the necessity of enacting statutes to remedy a particular evil and which must, of necessity, apply only to the particular class of persons committing the offense. The Court pertinently remarks that few statutes affect every citizen and person in the state, and that if the contention of counsel prevail, three-fourths of the statutes of the state would be erased.

To the same effect are the following cases.

Field J. in Railway Co. vs. Mackey 127 U. S. 205-208-209.
Budd vs. New York 143 U. S. 517.
State vs. Coal Co. 36 W. Va. 832.
Dent vs. West Virginia 129 U. S. 124.
Leep vs. Railway Co. 58 Ark. 407.
Mayor vs. Miln. 11 Peters 139.
Brimm vs. Jones 11 Utah 200, lately affirmed by this Court. 165 U. S. 180.

Nor is it necessary, even where they are engaged in business of the same general description, that the regulation shall apply to both. For instance a stage line or steamboat line resemble a railroad in the matter of its general business, and foundries and blast furnaces resemble railroads in the matter of danger

of fires from sparks, but a law applying only to railroad companies making them liable for damages caused by fires from sparks, was lately held by this Court to be consistent with the XIVth Amendment.

S. L. & S. F. R. R. Co. vs. Mathews, 165 U. S. 23. etc., and the many cases there reviewed.

Nor is the contention correct that a police regulation cannot apply to the individual to prevent him doing a thing which is harmful to himself. To sustain this contention counsel must assert the unconstitutionality of all laws relating to the use of opium.

(Ah Lim vs. Territory, 1 Wash. St. 159.)

Sunday Laws, (Hennigton vs. Georgia, 163 U. S. 299, 304-8), and the many illustrations there given.

The same case in 90 Ga. 396, 397, 399.

Inter-marriage of whites with other races.

Cooley's Const. Lim. (5th Ed) 483, Note 1, citing many cases.

And the various laws affecting drunkards and intoxicating liquors.

Devine vs. Scott, 34 Ind. 67.

And the line of statutes which do not affect the health or personal safety of the persons affected by them, but which are intended for his personal welfare. Such are the laws prohibiting the right to waive the benefits of the exemption laws by the head of a family.

Curtis vs. O'Brien 20 Iowa 376.

Denis J, in Kneetle vs. Newcomb 22 N. Y. 250. Holding that the borrower cannot waive the benefits of the usury laws. Bosler vs. Rheems 72 Pa. St. 54. The laws of some states punishing attempts to commit suicide.

The statutes of frauds of limitations, conveyances etc., approach very close to this line.

To the above might be added many instances in which the Courts have upheld, as constitutional, laws which are designed to protect the individual against his own act. The fact that he is *sui juris* does not shut him off from the benefits of such laws. The State still retains an interest in his welfare however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected the State must suffer. Counsel cites no authority, but expresses his opinion, in support of his contention that laws regulating the speed of railroad trains and horses are designed only for the benefit of others than those in charge. The driver does not and cannot "separate himself from the public," as counsel claims, by his reckless conduct. If he is injured the natural result is that he becomes a burden upon the public. Apart from humane considerations this threatened burden is sufficient to justify such protection to the individual against his will. The conten-

tion of counsel that such laws can apply only to lunatics, children and the like, and never can reach persons who are *sui juris* is not supported by reason or authority, and is in direct conflict with the cases above cited and those referred to in the latter part of this argument.

The argument that since an employee may assume certain risks and be prevented from recovering damages from his employer by civil action, that the employee may also represent the State and waive its right to punish a violation of its police regulations forbidding that risk, is not sound. If the State could part with this power, which it cannot do (Stone vs. Miss. 101 U. S. 814), it would not delegate it to one so reckless.

The contention of counsel (page 12 of his brief) that a police regulation can be directed only at a business "affected with a public interest" cannot be made seriously. No health regulation that we can now call to mind and few police regulations of any description are directed at a business affected with a "public interest," as that phrase has been defined and applied by the Courts. Such regulations when made usually refer to matters of *wages, charges or compensation*, and have been justified on the ground that the business is affected with a "public interest;" and some Courts have said that matters of wages or compensation can-

not be regulated unless the business is affected with a "public interest."

The business of mining and smelting are matters of very great and vital interest to the State of Utah. Many of the towns and a very large per cent of the population of the State are dependent upon these industries for their living.

If the legislative declaration can have such effect the business of "mining, milling, smelting or other reduction of ores * * are * * declared to be for the *public use*, and the right of eminent domain may be exercised in behalf thereof." (Laws of Utah of 1896, page 316.)

If the widespread importance of their continuance or the right to enjoy this franchise of eminent domain has the effect of bringing these classes of business within the definition of those affected with a "public interest," then it would seem that those conducting the business are subject to legislative regulation for that reason alone.

Munn vs. Illinois 94 U. S. 113.

Budd vs. New York, 143 U. S. 517.

Georgia Banking Co. vs. Smith, 128 U. S. 179.

Tiedeman's Police Powers Sec., 179.

But the case at bar does not involve the matter of wages or compensation in any respect. The object and effect of the Utah Statute is to provide for the *health* and *safety* of those engaged in the business,

and by protecting them and preserving their ability to work and support themselves and families to save the public the burden of their support.

The case of United States vs. Martin 94 U. S. 400, cited by counsel under this head does not seem to support his contention that the statute here does not treat of a subject within the police power. It is true the Court in that case says that statutes regulating wages and the like are not now in vogue; but speaking of the subject of the hours of labor as affecting the health and ability of employees to labor say:

"There are some branches of labor connected with furnaces, foundries, steam or gas works where the *labor and the exposure of eight hours a day would soon exhaust the strength of a laborer and render him permanently an invalid.*" The Court thus takes notice of the dangers to health and safety of certain kinds of labor, and of the limit of human endurance. The Utah Legislature and Court were dealing with a subject where the dangers where even greater by reason of the place of work and the foul air and poisonous substances surrounding the laborer, and the other unhealthful features mentioned by the Utah Court.

The brief quotation from Sec. 178 of Mr. Tiedeman's work is not a full, fair or accurate statement of the law. The full force or weakness of this attempted declaration of the law cannot be properly seen without reading the whole of the section. The course of reasoning upon the subject there discussed

is not clear or satisfactory. Without attempting a review of that section we call attention to the defects in the statement of the law as given at the close of the section, in this: that it purports to be a statement of the law in all cases whereas it can apply only where questions of health and safety and general welfare are not involved. Cases of "frauds and trespasses" are not the only exceptions to the rule. All cases affecting the health and morals of the people are exceptions also. And in every case where a private contract comes in conflict with such laws *the contract must give way*

An illustration of our contention that the terms of the contract in a strictly private contract, and even as to the hours of labor, can be so regulated, is that presented in the case of 163 U. S. 299 (*supra*) where the right to labor on Sunday is denied. Under such laws clerks and employees of all kinds are prevented from contracting to work more than six days in the week. We feel that Mr. Tiedeman's opinion upon this question, unsupported by authority, is directly in conflict with the many cases we have cited wherein the statutes regulating the terms of private contracts have been upheld. Mr. Tiedeman is the first we have known to contend that the police powers were confined to questions of "fraud and trespass."

We can see no application of the quotation from Boyd vs. United States (page 21 plaintiff's brief), for

there is nothing in the record to show that the Utah statute was passed with undue haste or that objections to it have become developed by time and the practical application of the law. On the contrary it is a matter of public and general knowledge in the State of Utah of which the Utah Court might properly take notice that in the enactment of this law the legislature had before it the Act of Congress donating land for a hospital for those who succumbed to the dangers of mining; the clause in the State Constitution enjoining legislation for the health and safety of miners; the discussion of this clause and of this particular bill before its passage both in the daily press and in the legislature; the investigations and reports of legislative committees as to the effect upon the health of underground miners and employees in smelters of long hours of work; the statistics so obtained showing that where such employees worked ten or twelve hours per day the usual result was that such employee was "leaded" or otherwise disabled, and was compelled to lose from one fourth to one third of the days in each month, in a hospital or under medical care and became prematurely old and disabled. And that with these matters thoroughly and at length discussed and considered this statute was enacted by unanimous vote of the State Senate and by over two-thirds of the House. As to objections which have developed later, we have heard of none. The

law has received the general approval of both employers and employees. The only violation of its provisions since its enactment are those of plaintiff in error.

SECOND.

Plaintiff's second contention (brief page 21) is but another form of stating his first and third. While in its statement it would appear that plaintiff claims a right *as a citizen of the United States*, no circumstance is stated indicating that any right is claimed which depends upon any statute or treaty of the United States, or based on his Federal citizenship. The claim of plaintiff of the right "to pursue unmolested a lawful employment in a lawful manner" is but an other form of stating that if this right be denied he would be deprived of his "liberty" or "property" without "due process of law," or the "law of the land," or that he is denied the "equal protection of the law"—all being expressions of the same meaning so far as they can be made to apply to the case at bar.

The plaintiff states that he is a citizen of the State of Utah. The statute in question relates only to the people of Utah. He is not affected differently from any other employer of labor in underground mines or in smelters, etc.

It has been held that the Federal Constitution has no application to statutes of the several states un-

less such statutes encroach upon one of the powers expressly surrendered to Congress, or is in direct violation of some constitutional restriction upon the state. This has be held in many of the cases above mentioned, and to the same effect are:

License Tax cases, 5 Wall. 462.

U. S. vs. DeWitt, 9 Wall. 41.

And after the adoption of the XIVth Amendment it was held that no change in this respect was made or intended by that amendment. To this effect are:

Slaughter-house Cases, 16 Wall. 36.
Stone vs. Miss., 101 U. S. 814.
U. S. vs. Cruikshank, 92 U. S. 542.
Barbier vs. Connelly, 113 U. S. 27.
Mugler vs. Kansas, 123 U. S. 633.
Butchers Union vs. Crescent City Co. 111 U. S. 746.
Beer Co. vs. Mass., 97 U. S. 501.
Fertilizing Co. vs. Hyde Park, 97 U. S. 659-667.
Powell vs. Penn., 127 U. S. 678.
New Orleans Gas Co. vs. Louisiana L. Co., 115 U. S. 650.
Patterson vs. Kentucky, 97 U. S. 501.

But, for the purposes of this discussion we will assume that the XIVth Amendment is not confined to the subject wich induced its adoption, and that it be given the full scope of applying to all citizens of the United States, and as a new protection of the rights of all citizens against legislation by the states denying or abridging any right which properly belongs to the citizen of this country. This is certainly all that counsel can claim for it.

What then are the rights of such person? By the adoption of the Constitution and its amendments it was not intended to change our system of civilization. The maxims, "*sic utere tuo ut alienum non leadas*," and "*salus populi suprema lex*" were not abolished.

When the Constitution speaks of "liberty" and "property" it does not refer to the liberty and property of the savage, but as enjoyed by a *member of civilized society*. It was not intended that after its adoption no man should be restrained from using his liberty or property to the detriment of himself, his neighbor or of the public.

In speaking of these rights and the limitation upon them Chief Justice Shaw says in Com. vs. Alger 7 Cush. 84:

"We think it a settled policy growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified his title, holds it under the implied liability that its use may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth, as well in the interior, as that bordering on the tide waters, is derived directly or indirectly from the government, and held subject to those general regulations, which are necessary to the common good and general welfare. Rights of property like all other social and conventional rights, are subject to such reasonable limitation in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations, by law, as the

legislature under the government and controlling power vested in them by the Constitution, may think necessary and expedient."

As Dunbar J. says, in the case of Ah Lim vs. Territory (1 Washington State, at page 165):

"It is common to indulge in a great deal of loose talk about the *natural rights* and *liberties*, as if these were terms of well defined and unchangeable meaning. *There is no such thing as an absolute or unqualified right or liberty guaranteed to any member of society.* Natural rights and liberties of a subject are relative expressions and have relative or changeable meaning * * * The State has an interest in the health of its citizens, and *has a right to see to it that its citizens are self supporting.* * * It is compelled to maintain hospitals for its sick, and poor houses for its indigent and helpless, and surely it ought to have no small interest in, and no small control over, the moral, mental and physical condition of its citizens. If the State concludes that a given habit is detrimental to either the moral, mental or physical well being of one of its citizens to such an extent that it is liable to become a burthen upon society, it has undoubted right to restrain the citizen from the commission of that act, and fair and equitable consideration of the rights of other citizens make it not only its right but its duty, to restrain him."

To the same effect is the language of many Courts and law writers.

It is therefore apparent that the Constitution in referring to "liberty" and "property" referred to the liberty and property which are subject to regulations for the protection of the health, safety and gen-

eral "welfare of the whole people of a State or any individual within it." Subject to such regulations a citizen has the right to engage in any "lawful calling in a lawful manner." He may practice medicine (if he can comply with the numerous regulations which are held to be constitutional), or law (if he possesses the qualifications, moral as well as intellectual, and complies with the regulations and statutes), or in mercantile pursuits he may choose his favorite branch and follow it (if he procures a license, when that is required, and confines his sales to articles which are not prohibited), or if of inventive turn, he may obtain and sell patent rights (provided he does not take notes in forms prohibited by statute), or he may employ labor as a manufacturer or in other industries (if he does not compel them or contract with them to work for him on Sunday), or, in more humble station, he may own teams and wagons and may drive them on the streets at any time (unless he is engaged in a business where he is limited to certain hours or to certain streets) In short, while he is free to choose his calling and employ his labor or other property in any lawful calling, it is and must be subject to regulations which may in the particular case seem to interfere with a "liberty" or "property" but which are essential to the health and safety and the general welfare of himself as well as his neighbor and society in general.

None of the cases cited by counsel are in conflict with the rule as above stated.

The language of Justice Field in the Slaughter-house cases (16 Wall. 97) and in the Butcher's Union vs. Crescent City Co. (111 U. S. 746) recognizes and emphasizes this limitation upon liberty and property. Wherever the "right to pursue a lawful calling" is referred to will be found the reservation: "*in a lawful manner*" or "*in any manner not inconsistent with the equal rights of others,*" or "*without injury to his neighbor.*" If such use of "liberty" or "property" (and we cannot doubt, but on the contrary insist, that labor and the right to labor are within the meaning of the terms "liberty" and "property" and are subject to regulation as other property is) may result in an injury to his neighbor or may result in the person using them becoming a burden upon the public, it is "not only the right but the bounden and solemn duty of the state" to prohibit such use or to regulate it so as to make it safe and healthful.

Several cases from the State Courts are cited by counsel under this head with the claim that they involve the exact question at issue in the case at bar. To us the similarity is not apparent, for by careful reading it will be seen that each case cited involved statutes which made classifications which were not consistent with the subject of the Act, and could not be considered as health regulations.

Whether it be better or safer to reserve to the Courts the power to review the action of the legislature in the matter of its classification of subjects, or to leave such questions to the discretion of the legislatures which come from and go back to the people at short intervals, has been a question upon which very able Judges and Courts have been unable to agree. But in cases where the Courts have retained the right to determine whether the maxim, "*salus populi suprema lex*" was properly invoked, such Courts have uniformly adhered to the following rules or tests, viz:

1st. Is a right protected under the Constitution affected by the Act in question? If no clear and well defined Constitutional right is destroyed the inquiry by the Court stops immediately.

2nd. If such right is affected, then, is the Act one which was honestly intended or calculated to benefit or advance the health, safety or general welfare of the people? If it is manifestly intended for some other purpose, (as in the Jacobs case or the Marx case) the Courts which hold to this right of judicial review, have held that the Act cannot stand. But where the Court can see that the Act has some relation to these subjects of health, safety, or general welfare, and are susceptible of such construction, the benefit of the doubt, if there be one, is given to the State, and the Act is permitted to stand.

Other Courts have concluded that it is the province of the legislature, under our system of government, to determine whether the law is appropriate to some feature of the health, safety or general welfare, and have refused to disturb their decisions.

But under either view of this power of the Court to supervise the Acts of the legislature, no Act has been declared void unless it was *manifestly* designed for some purpose other than the health or safety of the citizen.

In the cases cited by counsel, where the statutes were held void there was not in any one of them a reasonable relation to the health or safety of the classes affected or of the public in general.

Thus in the Kubeck case (85 Cal. 274), an ordinance of the city prevented a contractor with the city from contracting to pay wages on any other basis than eight hours per day. It applied to all labor employed by such contractor, whether it consisted in driving teams, paving streets, carrying water, keeping time, clerks, whether done in the open air and sunlight or in closely confined quarters. By thus failing to classify and to make it applicable to some particular branch of industry that was dangerous to health or safety, if there were such, the ordinance had no apparent relation to the health of those affected. It was also confined to labor employed by a

contractor with the city, and did not apply to other contractors who might be employing laborers to perform precisely the same class of work under the same conditions. In thus attempting to fix the rate or basis of wages, in making it affect only one of a class of contractors who were similarly situated, and having no feature of a health or safety regulation in its term, its history or its possible effect, it was held void by the California Court.

In re Eight Hour Law 39 Pac. Rep. 328 (Colo).

From the report of this decision, or opinion, rather (if it can be so dignified) we cannot determine to a certainty the matter passed upon by the Colorado Supreme Court. From the language of the Court it would seem that the proper steps had not been taken by the legislature to entitle them to the aid of the Supreme Court. And while the report indicates that a second application was made to the Supreme Court, the length of the opinion given (some nineteen lines) would suggest that the legislature was still lacking in its method of appealing to the wisdom of the Court upon so serious question.

But whether for lack of formality in its presentation or because of press of business, the Colorado Court did not give to the question the serious thought and consideration that are necessary to give its opinion weight in illustrating the question presented in the case at bar. In view of the decisions of this

Court in the cases cited in this brief, we feel that if the Colorado Court had considered the question submitted to it with the care that is bestowed in contested cases, and especially if their attention had been called to the cases we have cited, that it might have arrived at a different result than that announced in the nineteen line decision cited.

It is true that the law submitted to that Court contained some provisions which should have been omitted if the law was designed solely as a *health* regulation, for as the proposed act read it applied not only to *all* labor in mines (whether on the surface or underground) but also to all factories, etc. The Court probably took notice of the fact that there is a material difference in point of health and safety between the work in *underground mining* where the laborer is working under the constant strain of working in the dark or by dim candle light and is breathing the foul gases from powder smoke and the like, and the work done in placer mines or surface working where none of these dangers to health and safety exist. And the Court probably took notice of the differences in the effect upon health and safety of the various kinds of business which may properly be classed as "factories." Some may be of the character referred to by this Court in the case of U. S. vs. Martin in which even eight hours work would be exhausting and dangerous and result in making the laborer un-

fit for self support and a burden on the people, while other factories may be engaged in that line of business where there is no mental or physical strain or danger and in all respects consistent with ten or twelve hours work per day. In this latter view the proposed law of Colorado would not be considered as a health regulation, and would in that respect resemble the Nebraska and Illinois statutes. Not being able to distinguish and therefore justify it as a health regulation, in that it was not confined to a particular feature of the business which was unhealthful, and since it was made to apply only to one—or rather three specific occupations which could not be separated from other kinds of business so far as health was concerned, the Court might have considered the proposed law as coming under the rule announced in Nebraska and Illinois. Such seems to have been the view of the Colorado Court, as they adopt the situation and decision of the Nebraska Court as the basis of their ruling.

In re House Bill No. 107 39 Pac. Rep. 431.

The opinion of the Colorado Court in this, as in the matter above mentioned is deprived of value by the lack of a definite or any statement of the terms of the proposed statute. Conceding to it all that can be claimed, it is an approval of all the cases cited in the opinion reported, upon an *ex parte* and uncontested matter.

In the case of Leep vs. Railway Co. (58 Ark. 407) an Act requires rail-road and rail-road construction companies to pay wages of employe when he is discharged. Counsel for plaintiff does not criticise this classification. The Arkansas Court held the statute valid. They justify the classification on the ground that it applies to all who may come into that business (439).

The case of State vs. Goodwill (33 W. Va. 179), prohibited owners of mines and manufactories from paying wages in anything but lawful money. The Court recognizes the extensive scope of the police power, but cannot approve that act which, dealing with the question of wages, is confined to only two of the many industries where wages are paid. It was in no sense a regulation for the health or safety of those affected.

Godcharles vs. Wigeman, 113 Pa. St. 437, was a case where Wigeman had accepted and actually used certain orders for coal given him by his employer in payment of wages, and then attempted to repudiate his act by suing for cash, claiming that the statute entitled him to his wages in cash, notwithstanding the fact that he had already asked for and accepted the coal. The Court held him to his acceptance of the coal in payment of his wages. The only error committed by the Court in that case was in going outside of that case and outside of the proper

jurisdiction of a Court and denouncing the statute as void in all cases, because of its policy; and in denouncing all legislation which attempts to regulate the character or terms of private contracts. We have seen by the cases we have cited that such regulation, as exemption laws, lien laws, liquor laws, Sunday laws and the like are constitutional, and the Pennsylvania Court in earlier and later decisions has so recognized them. In holding that Wigeman in a civil action would be held to his acceptance of coal for wages and not be permitted to recover double pay for his work the court certainly did justice; but in denouncing all legislative interference with private contracts made by parties who are *sui juris*, the Court departed from precedents established by that Court and this.

The same Court in the later case of Powell vs. Com. 114 Pa. St. 265, take a more reasonable view of the power of the Court to review the policy of police regulation and say: (at page 295).

"To refuse recognition of the power, in a given case, because, in the judgment of some, the legislature though acting within its proper sphere, may have mistaken the public necessity for a law prohibitory in character, is to make the individual judgment superior to that of the legislature to which the people in their sovereign capacity have delegated the law making power."

As the Court in this latter case expressly approve the decision and views of the lower Court, we would

call this Courts' attention to the opinion of the lower Court found at 114 Pa. St. at pages 265-282. This opinion contains a very able and extensive review of many cases in which police regulations affecting individual rights have been held constitutional.

After reading the well considered opinion in the Powell case (114 Pa. St. 265), we feel that the Pennsylvania Court might not have held or expressed the views contained in the *dicta* in the Godcharles case had that case directly involved the constitutionality of the wage statute. But even if those views can be approved we do not see that they can apply to the case at bar. The Pennsylvania statute was not in any sense a regulation for the health or safety of the individual or the public, but was confined to the question of wages and the kind and manner of their payment; while the Utah statute is strictly a health and safety regulation—a subject by *all* Courts held to be within the police power. The Pennsylvania wage statute was also limited to a few of the many wage earners, thus making a classification disapproved by some of the Courts. Other differences might, perhaps, be mentioned, but the above are sufficient to distinguish that case from the case at bar.

We have referred to the Godcharles case at some length for the reason that it was the foundation for all the other cases especially relied upon by counsel for plaintiff in error.

In Com. vs. Perry, 155 Mass. 117, the statute in question prohibited employers from making deductions in *wages* for defects in weaving. The statute not only affected the question of wages, but in a most unfair manner by compelling the employer to pay full wages for inferior work, and thus changed the contract between the parties which provided that deduction should be made for inferior or defective work (p. 118-119).

The Massachusetts Court did not criticize the manner of classifying, though the statute affected but one class of wage earners and employers. On the contrary the right to so classify is specially mentioned by that Court. At page 121, they say:

"It might well be held that if the Legislature should determine it to be for the best interest of the people that a *certain class* of employes should not be permitted to subject themselves to an arbitrary fine, it might pass a law to that effect."

From this language it would seem that that Court recognizes the propriety and constitutionality of legislative protection for *certain classes of employes* who, by reason of their needy condition, require protection from the imposition of employers.

Shaver vs. Penn. Ry. Co. 71 Fed. 931. A statute of Ohio prohibited agreements or stipulations of persons in, or about to enter the employ of railroad companies *waiving* (p. 936) right to damages for personal injuries, and declaring such agreements and stipula-

tions void. The act applied only to employment for railway companies and did not affect employees or employers in the many other industries where the conditions were the same.

As a member of a Relief Department which was largely supported by the defendant the plaintiff agreed that if he should accept its benefits he should thereby "release all claims for damages against said defendant." (See statement of terms of agreement by the Court, p. 933). The plaintiff after accepting several hundred dollars from the Relief Department, commenced suit for damages for the injuries on account of which he had received the benefits. He was free either to sue, or to accept the benefits as settlement. The Court held him to his acceptance. It was an application of the rule that where claims for damages are unliquidated the parties may agree on such settlement or compromise as they see fit, and having voluntarily made it and accepted its fruits they will be held to it. Judge Ricks held the statute to be class legislation and void as extending only to one class of a large number similarly situated.

The statute was not a health or safety regulation in any sense. We cannot see that the Ohio statute was necessarily involved in that decision, for by its terms it did not prevent a *settlement* of claims for damages, but only prohibited a *waiver* of such claims. Had the Court there held that the statute had no ap-

plication to that case the decision would have been correct, and fully justified under the rule that Courts will not seek an opportunity to denounce statutes as unconstitutional.

In re Tiburcio Parrott 1 Fed. 481.

This was the case where the constitution and statutory law of California preventing corporations from hiring or employing Chinese was brought into question. This law and the constitution of California was declared void, as being in controvention of the Constitution of the United States and the statutes and treaties of the general government. The Court also held, such treaties and law respecting Chinese belong to the United States Government and not to the state. The Court could not see in that law any elements of a police regulation, but on the contrary, thought that by depriving Chinese of an opportunity to earn a living was to make them vagrants, paupers and criminals, and thus make it burdensome on the state to provide for such paupers or vagrants, etc. It was therefore not only an infringement of a power surrendered to congress, but possessed no features of a law for the health, safety or general welfare of those affected, or of the public.

THIRD.

Under the third contention of Counsel it is claimed that the *plaintiffs' employe* is deprived of equal pro-

tection of the law, and is deprived of his liberty or property without due process of law. Ordinarily Courts are called on to pass upon the rights of the parties to the action only. Realizing the hesitancy with which Courts subject to the constitutional test, the Statutes of a State, it might be regarded as showing lack of confidence in his own cause when plaintiff assumes this position of guardian for his employe.

Ordinarily those of the plaintiffs' situation do not devote such time and energy and expenditure of money in retaining the ablest Counsel as have been necessary in this case, in the protection of the employes' interests.

This philanthropic interest deserves reward and we consent that he may use the cloak of the employe if Counsel feels that it will give his cause a better appearance. But in this exchange of courtesies the employe of Utah does not wish to be bound by what may be done in his name by the plaintiff; for the statute in question has in point of renewed health and ability to work full time each month proved entirely satisfactory to the laborers and the taxpayers.

But to consider plaintiffs contention as to the effect of this statute on the employe.

Counsel argues that though it may be a health regulation it is unconstitutional because "*it restricts the earnings of the employe to what he may be able to obtain from his employer for eight hours' work, and prevents him*

from earning the additional pay which he would be entitled to if he worked more than eight hours a day."

Even if this were the necessary effect of the law it would be a proper health regulation, for by preserving to a citizen his ability to work and support himself is not only humane but is preventing a burden on the people.

But such is not the effect. The various kinds of labor in connection with mines and mining camps is a matter of general knowledge. The work underground is but a part. The removal of *debris* taken from underground, the sorting of ores, the preparation of timbers, sharpening tools and the various other kinds of labor necessary to be done on the surface in connection with evey mining enterprise furnish ample opportunity for more hours of work for the over ambitious miner. Our judgment is that after the exhaustion of eight hours work underground the miner will be inclined to partake of all the sunshine, fresh air and rest available.

But there is nothing in the Utah statute to prevent his working as many hours as he may wish on the surface.

And were the question of wages or earning capacity proper to be considered in this case the contention of counsel would be fully answered by the common experience of such employes. When working ten and twelve hours each day, and seven days in the week (for mining and smelting are industries

conducted under such conditions that work cannot ordinarily be suspended one day in the week)—miners and smelter employes find that they become what is commonly called "leaded," and otherwise disabled from work. The time lost in hospitals and the expense of medical bills make serious inroads on their earnings. Under the present system of eight hours per day at such work, leaving them free to rest and recuperate, the usual experience is that they can put in the full thirty days each month. In this the judgment of the legislature has been fully sustained.

The argument that the legislature *may* limit the hours to a less number is unsound, and has been so pronounced by this Court in the case cited by Counsel (Munn vs. Illinois, 94 U. S. 113), where the Court says in answer to a like contention:

"That the power may be abused * * is no argument against its existence. For protection against abuses by Legislatures the people must resort to the polls, not the Courts."

Under this head Counsel cites various cases which he insists support his contention that the plaintiff (or his employe) has been deprived of liberty or property without "due process of law" or the "law of the land." The error of Counsel in attempting to apply the cases cited to the case at bar is illustrated by the misquotation from the case of Jones vs. Reynolds 2 Tex. 251 (page 37 plaintiff's brief). As quot-

ed it reads: "and this means general public law, binding upon all members of the community under *all* circumstances etc." As announced by the Texas Court it reads: "under *similar* circumstances," and such is the language and idea expressed by the many able Courts and Judges in defining and applying the phrases, "due process of law" and the "law of the land." It is true that Judges have at times given definitions which were strictly correct as applied to the particular case but were not full statements perhaps if applied to a different state of facts. In applying decisions cited, this Court has well said: "The opinion of a Court must always be read in connection with the facts upon which it is based."

Doyle vs. Insurance Co., 94 U. S. 538.

Insurance Co. vs. Morse, 20 Wall. 456.

With this rule in mind *it will be found that no case cited by counsel can be considered as applying to the case at bar.*

The Jacobs case (98 N. Y. 98) was admitted not to be a health or safety provision.

Low vs. Rees Printing Co., 41 Neb. 127.

The plaintiff, a printer, commenced his action against his employer, the defendant company, for wages, alleging that he was working under a contract by which he was to be paid at the rate of thirty cents per hour. That the defendant had him work 11 hours per day, and that there was due him for the

first eight hours $2.40; for the ninth hour 60c, for the tenth hour $1.20, and for the eleventh hour $2.40. His claim for the extra work per hour for the hours in excess of eight per day being based on the statute of Nebraska, which provided:

Sec. I. "That eight hours shall constitute a legal day's work for *all* classes of mechanics, servants and laborers throughout the State of Nebraska, *excepting* those engaged in farm and domestic labor."

Sec. 8 "Any employer or corporation working their employes over the time specified in this Act, shall pay as extra compensation double the amount per hour as paid for previous hour."

The Act is held unconstitutional in that it is class legislation, the classification not being made with regard to particulars which are peculiar to the industries included, or different from those excluded. It was not and could not be claimed to be a health regulation for it included many industries where ten or twelve hours or more per day would not be injurious, and it excluded industries or labor in which the need of rest was as great as in many of those included. The convincing proof that it was not a health or safety regulation is found in the provision that permits as many hours as desired at increased wages.

Ritchie vs. People. 155 Ill. 98. The statute of Illinois was almost as sweeping as the Nebraska statute. It included many industries in which there would be no injurious result from working more than

eight hours per day. And like the Nebraska statute it was not broad enough to include many kinds of labor which were as exhausting as many of those included. The Court recognizes the right to enact police regulations as to the character and terms of private contracts, but says that such legislation is subject to review by the Courts to determine whether it be on a "reasonable basis." The Illinois eight hour statute in question not meeting the approval of the Court on that test it was held void.

Millett vs. People. 117 Ill. 294. The statute was confined to mine owners and was held to be an arbitrary and unreasonable classification and regulation in matters where the industry did not differ from many others. It required scales, books, etc., to be kept at the expense of the owner; and prohibited contracts with employes to be made on any other basis than the weight of the coal mined.

Frorer vs. People. 141 Ill. 171, like the preceding case was confined to one class of employers whose business in the particular affected by the statute was not different from that of other employers. It prohibited persons engaged in mining or manufacturing business from paying wages in "store orders." While disapproving this kind of regulation as to mines the Court says: "*In all matters relating to mining * * wherein they differ from other industrial branches, the Legislature has the constitutional power whether any, and if any,*

what, statutes shall be enacted for their welfare and necessarily affecting them alone."

The Utah statute comes within this description.

Braceville Coal Co., vs. People. 147 Ill. 66 was, like the preceding case, limited to one of many enterprises similarly engaged. The Court could see no reason why corporations more than partnerships or individuals should be required to pay wages weekly.

Ramsey vs. People. 142 Ill. 380 involved a statute which was held subject to the same objections as in the other Illinois cases.

People vs. Marx 99 N. Y. 377. The statute *prohibited* sale of oleomargarine. It was held to be manifestly to prevent competition with butter producers, and in no sense a provision for the health, safety or welfare of the people.

State vs. Sheriff of Ramsey Co. 51 N. W. 112. The statute in question was a smoke regulation, but by its terms made such exceptions as to take from it the features of a health provision.

People vs. Gilson 109 N. Y. 389 involved a statute prohibiting giving presents with goods sold. It was claimed to be a provision in the interest of health or morals, but the Court was unable to see that it could be so considered under any possible construction.

The case of State vs. Loomis 115 Mo. 207 is, perhaps, one of the most instructive of the cases cited by counsel as it contains a review of most of the

cases especially relied on by counsel for plaintiff, and we call special attention to the dissenting opinion of Barclay J. at page 220. The majority of the Court hold void the statute there regulating the manner of paying wages of but one class of employes not differing from any other in the respect affected. The majority hold that the classification must be on a reasonable basis. In its discussion of the subject the Court suggests that regulations applying to mines alone are proper when concerning the health and safety of those employed.

The opinion of Barclay J. is upon the view expressed by many of the judges and Courts in the cases which we shall hereafter cite, viz: that it is as safe to leave it to the legislatures to determine the matter of classification for police regulation as for the Courts to pass upon it.

And when we consider the intention of the framers of the Constitution with regard to the location of powers, as explained to us by Chief Justice Marshall, Chief Justice Shaw, Justice Barbour and Redfield, and the many able opinions of other judges and Courts it would seem clear that this power of providing regulations for the health, safety and welfare of the people was intended to be left to the discretion of the legislature of the States. And when we compare the opposing views of Courts as to the propriety of laws and classifications made as the basis of such regulations,

it would seem convenient and as safe to leave it with the legislatures who are better situated to know the needs of the people.

To illustrate this conflict between the Courts as to what are reasonable classifications and regulations:

The decision in People vs. Marx 99 N. Y. 377 seems in direct conflict with Com. vs. Powell 114 Pa. St. 265.

The decision in Frorer vs. People 141 Ill. 171, and in the similar cases cited are met by a contrary view in Leep vs. Railway 58 Ark. 407 and in State vs. Coal Co., 36 W. Va., 802, Hancock vs. Yaden 121 Ind., 369 and State vs. Brown 18 R. I. 16.

The *dicta* in Godcharles vs. Wigeman and the private opinions of judges who criticize the policy of regulating the affairs and contracts of persons who are *sui juris* is fully met by the decisions of the Courts in the cases cited below in which the law was held to be valid.

Beer Co. vs. Massachusetts, 97 U. S. 25, in which it is decided affirming Bartemyer vs. Iowa, 18 Wall. 129, that a State law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the constitution of the United States, and that if the public safety or the public morals require the discontinuance of any manufacture or trade, the legislature, in the exercise of the police power, may require its discontinuance even as against a corporation chartered for the express purpose of carrying it on.

Patterson vs. Kentucky, 97 U. S. 501, where the same principle is applied to an act forbidding the sale of an article for which a patent had been granted by the United States: Stone vs. Mississippi 101 U. S. 814, where the same principle was applied to the charter of a lottery company:

Barbier vs. Connelly, 113 U. S. 27, and Soon Hing vs. Crowley, Id. 703, which hold that a municipal ordinance prohibiting washing and ironing and public laundries and wash houses within certain hours is a valid exercise of the police powers.

Blair vs. Forehand, 100 Mass. 136, holding that an Act providing that any person might kill any dog not licensed and collared, as provided by the statute, wherever found, was a valid exercise of the police power.

Bertholf vs. O'Reilly, 74 N. Y. 509, (30 Am. R. 323) deciding after a full discussion of the extent of the police power that a statute enacting that the lessor of premises, with the knowledge that they are to be used for the sale of intoxicating liquors, shall be liable for damage caused by the act of one intoxicated by liquor sold there, is constitutional.

Woods vs. State, 36 Ark. 36 (38 Am. Rep. 22), holding that under the statute forbidding the sale of ardent spirits by any person for any purpose without a license, a druggist cannot lawfully sell such spirits, even as medicine upon the prescription of a physician —citing numerous cases to show that the right of the legislature in the exercise of the police power of the State to regulate or prohibit the sale of intoxicating liquor has been settled by the Court beyond controversy.

State vs. Mugler, 29 Kan. 252 (44 Am. Rep. 643), which holds that a law prohibiting the brewing and

selling of beer, applied to beer lawfully manufactured before the law took effect.

Davis vs. State, 68 Ala., 58 (44 Am. Rep. 128), where it is decided that a statute declaring it unlawful, within certain counties, to transport or move after sunset and before sunrise any cotton in the seed, was constitutional.

Donnelly vs. Decker, 58 Wis., 461 (46 Am. Rep. 637), in which the court held that a law providing for the drainage of lands, whenever the town Supervisors shall deem it conducive to public health, and for the payment of damages, and for the assessment of the whole cost on the land benefitted, was constitutional as an exercise of the police power.

Hawthorne vs. People, 109 Ill. 302 (50 Am. Rep. 610), decided that a law requiring operators of butter and cheese factories on a co-operative plan to give bond for faithful accounting for property received for a manufacture, is not unconstitutional.

Fry vs. State, 63 Ind. 552 (30 Am. Rep. 238), holding constitutional a statute regulating the issue and sale of tickets by railroad companies.

State vs. Ah Chew, 16th Nev. 50 (40 Am. Rep. 488), sustaining statute prohibiting the sale of opium.

Commonwealth vs. Waite, 11th Allen, 264. This case decides that the legislature have the right, in the exercise of the police power, to make it a criminal offense to sell pure milk mixed with pure water.

Holding that a borrower can not waive the benefits of a usury law.

Boler vs. Rheems, 72 Pa. St. 54.

The law declares that payment in part of an

ascertained debt shall not extinguish it, although the parties agree that it shall do so.

Ogborn vs. Hoffman, 42 Ind, 439.
Smith vs. Tyler, 51 Ind. 512.
Markel vs. Spitler, 28 Ind. 488.

A party will not be allowed to contract to waive the benefit of homestead or exemption laws.

Maloney vs. Newton, 85 Ind. 565.
Kneettle vs. Newcomb, 22 N. Y. 249.
Curtis vs. O'Brien, 20 Iowa 376.
Moxley vs. Ragan, 10 Bush. 156 (19th Am. Rep. 61.)

A debtor cannot waive stay of execution by contract.

McLane vs. Elmer, 4 Ind. 239.
Develin vs. Wood, 2 Ind, 102.

By the English law a seaman cannot, by contract, waive his right to wages. Kay Shipmaster and Seaman 626.

Parties cannot, by contract, bind themselves in advance not to resort to the Court for the redress of wrong.

Bauer vs. Samson Lodge, 102 Ind. 262.
Dugan vs. Thomas, 79 Me. 221.

A contract providing that a party shall not remove a cause to the federal court is void.

Insurance Co. vs. Morse, 20 Wall. 445.
Doyle vs. Continental Ins. Co., 94 U S. 535.

A party will not be allowed to contract without limitation that he will not engage in a particular business.

Taylor vs. Saurman, 110 Pa. St. 3.

A statute may require parties to insert in a promissory note the words "given for a patent."

Herdic vs. Roessler, 109 N. Y. 127;
New vs. Walker, 108 Ind. 365.

Priority in the allowance and payment of claims may be regulated by legislation.
U. S. vs. Fisher, 2 Cranch 358.

A lien for miner's wages may be made superior to the royalty due the owners of mine from the lease or operators.
Warren vs. Sohn, 112 Ind. 213.

Churchman vs. Martin, 54 Ind. 380, wherein it was held that a statute prohibiting parties from contracting to pay attorney's fees is constitutional.

"The authorities to which we have referred and to which it would be no great task to add others, prove that the law making power of the State does have authority over the right to contract.
Hancock vs. Yaden, 121 Ind. 370.

To the above list might be added the laws forbidding a white person from contracting marriage relations with a negro or person of other than the caucasian race; laws preventing the loaning of money at a rate higher than a certain per cent; laws giving land-lords liens; laws giving employes, laborers and servants a prior lein over other creditors when the business of a person, firm or corporation has been suspended or attached by the creditors of such firm, person or corporation; laws not allowing bankers the benefit of the statute of limitation against depositors; contracts or agreements that future disputes shall be settled by arbitration instead of in the Courts; statutes prohibiting claimants from testify-

ing in actions against estates of deceased persons in their own behalf, or in support of their claim, etc., etc.

We think the foregoing cases are sufficient answer to the main contention made by plaintiff here, viz: That his right to contract in private matters cannot be regulated or interfered with by statute. To so hold would be to hold unconstitutional all the statutes above mentioned. That contracts may be so regulated in matters which do not affect the health or personal safety is amply shown by the cases cited. While courts have differed as to the policy and expediency of statutes relating to wages or compensation, no decision can be found holding unconstitutional a statute which reasonably related to health.

That these regulations may extend not only to the character of the work, but also govern the terms with reference to the number of days or hours an employe may work or be employed to work, is clear from the principles announced in the foregoing cases, but directly upon this question are the following cases:

Com. vs. Hamilton 120 Mass. 383, holding constitutional a statute prohibiting the employment of women in any manufacturing establishment more than ten hours a day, or sixty hours per week.

Approved *in re* House Bill 1230, 40 N. E. 713.

People vs. Havenor, 149 N. Y. 195. "The physical welfare of the citizen is a subject of such prim-

ary importance to the state and has such a direct relation to the general good as to make law tending to promote that object proper under the police power. * * *

"Every man's liberty and property are to some extent subject to the general welfare, as each person's interest is presumed to be promoted by that which tends to promote the interest and welfare of the public. * * *

"It is in the interest of the state to have strong, robust, healthy citizens, capable of self support, or bearing arms, and adding to the resources of the country. Laws to effect this purpose, *by protecting citizens from over-work* and requiring a general day of rest to restore his strength and preserve his health, have an obvious connection with the public welfare. Independent of any question relating to morals or religion, the physical welfare of the citizen is a subject of such primary importance to the state, and has such a direct relation to the general good as to make laws tending to promote that object proper under the police power, and hence valid under the constitution, which presupposes its existence and is to be construed with reference to that fact.

"The statute under discussion tends to effect this result because it requires persons engaged in this kind of business, that takes many hours each day, to refrain from carrying it on during one day in seven. This affords an opportunity, recurring at regular intervals for rest, needed by employer and employee, and the latter may not have the power to observe the day of rest without the aid of legislation. As Mr. Tiedeman says in his work on Police Powers: 'If the law did not interfere, the feverish, intense desire to acquire wealth * * * * in-

citing a relentless rivalry and competition would ultimately prevent not only the wage earner, but likewise the capitalist and employer themselves from yielding to the warnings of Nature and obeying the instincts of self preservation by resting periodically from labor.' "

And to the same effect in passing upon the validity of the Georgia Sunday Law, is the case of Hennington vs. Georgia 163 U. S. 299 *et seq.*

CONCLUSION.

From the foregoing it will be seen that counsel for plaintiff is not justified in his claim that under the cases cited by him the statute in question would be unconstitutional. If its character, purpose and effect were kept in mind, viz: a provision for the health and safety of the employe and the welfare of the public resulting therefrom, applying only to that branch of the industries which is detrimental to health,—we would not fear the result were the question of its constitutionality submitted to any of the Courts named in plaintiff's brief.

Believing the Utah Statute to be free from Constitutional objections, we ask that the judgment of the Supreme Court of Utah in these cases be affirmed.

Very respectfully submitted,

CHAS. J. PENCE.

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Attorneys for Defendant in Error.

HOLDEN *v.* HARDY (No. 1).

HOLDEN *v.* HARDY (No. 2).

ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

Nos. 261, 264. Argued October 21, 1897. — Decided February 28, 1898.

The provisions in the act of March 30, 1896, c. 72, of Utah, providing that "The period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger;" that "The period of employment of workingmen in smelters and all other institutions for the reduction or refining of ores or metals shall be eight hours per day, except in cases of emergency where life or property is in imminent danger;" and that "Any person, body corporate, agent, manager or employer who shall violate any of the provisions of sections one and two of this act shall be deemed guilty of a misdemeanor," are a valid exercise of the police power of the State, and do not violate the provisions of the Fourteenth Amendment to the Constitution of the United States by abridging the privileges or immunities of its citizens, or by depriving them of their property, or by denying to them the equal protection of the laws.

The cases arising under the Fourteenth Amendment are examined in detail, and are held to demonstrate that, in passing upon the validity of state legislation under it, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some States methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals or classes had proved detrimental to their interests; and other classes of persons, particularly those engaged in dangerous or unhealthy employments, have been found to be in need of additional protection: but this power of change is limited by the fundamental principles laid down in the Constitution, to which each member of the Union is bound to accede as a condition of its admission as a State.

THESE were writs of error to review two judgments of the Supreme Court of the State of Utah, denying applications of the plaintiff in error, Holden, for his discharge upon two writs of *habeas corpus*, and remanding him to the custody of the sheriff of Salt Lake County.

The facts in case No. 261 were substantially as follows: On June 20, 1896, complaint was made to a justice of the peace of

Statement of the Case.

Salt Lake City that the petitioner Holden had unlawfully employed "one John Anderson to work and labor as a miner in the underground workings of the Old Jordan mine in Bingham cañon, in the county aforesaid, for the period of ten hours each day; and said defendant, on the date aforesaid and continuously since said time, has unlawfully required said John Anderson, under and by virtue of said employment, to work and labor in the underground workings of the mine aforesaid, for the period of ten hours each day, and that said employment was not in case of an emergency or where life or property was in imminent danger, contrary," etc.

Defendant Holden, having been arrested upon a warrant issued upon said complaint, admitted the facts set forth therein, but said he was not guilty because he is a native-born citizen of the United States, residing in the State of Utah; that the said John Anderson voluntarily engaged his services for the hours per day alleged, and that the facts charged did not constitute a crime, because the act of the State of Utah which creates and defines the supposed offence is repugnant to the Constitution of the United States in these respects:

"It deprives the defendant and all employers and employés of the right to make contracts in a lawful way and for lawful purposes;

"It is class legislation, and not equal or uniform in its provisions;

"It deprives the defendant, and employers and employés of the equal protection of the laws; abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law."

The court, having heard the evidence, found the defendant guilty as charged in the complaint, imposed a fine of fifty dollars and costs, and ordered that the defendant be imprisoned in the county jail for a term of fifty-seven days, or until such fine and costs be paid.

Thereupon petitioner sued out a writ of *habeas corpus* from the Supreme Court of the State, annexing a copy of the proceedings before the justice of the peace, and praying his dis-

charge. The Supreme Court denied his application, and remanded him to the custody of the sheriff, whereupon he sued out this writ of error, assigning the unconstitutionality of the law.

In the second case the complaint alleged the unlawful employment by Holden of one William Hooley to work and labor in a certain concentrating mill, the same being an institution for the reduction of ores, for the period of twelve hours per day. The proceedings in this case were precisely the same as in the prior case, and it was admitted that there was no distinction in principle between the two cases.

Mr. Jeremiah M. Wilson for plaintiff in error. *Mr. C. W. Bennett*, *Mr. R. Harkness*, *Mr. A. Howat* and *Mr. W. M. Bradley* were on his brief.

In both of these cases is involved the constitutionality of the same statute of Utah, the only difference being that in the first the defendant Holden was convicted of a violation of section one of said act, while in the latter he was prosecuted and convicted under the second section. We will, therefore, consider them together, referring in the following statement to the record in the first case.

I. The statute of Utah involved herein is in conflict with the Constitution of the United States, and is not a valid exercise of the police power of the State.

Before presenting our views in detail concerning the repugnance of this statute to the Constitution of the United States, and to the various clauses of the Fourteenth Amendment which we think applicable to the matter in controversy, we deem it appropriate to ask the attention of the court, at the outset, to some of the most conspicuous of the authorities bearing upon the general question as to the scope of this police power, and as to the subjects relating to which it may properly be invoked.

(*a.*) We have not found in any of the text-books or cases an authoritative statement defining and limiting the exact

scope and range of this power. In fact, this court itself, in the case of *Stone* v. *Mississippi*, 101 U. S. 814, has declined to specifically define it; but in the case of *New York* v. *Miln*, 11 Pet. 102, 139, will be found probably as concise and comprehensive a general definition of the term as could be given. The court says:

"We are aware that it is at all times difficult to define any subject with proper precision and accuracy. If this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering [the police power]. If we were to attempt it, we should say that every law came within this description which concerned the welfare of the whole people of a State, or any individual within it; whether it related to their rights or their duties; whether it respected them as men or as citizens of the State; whether in their public or private relations; whether it related to the rights of persons or of property, of the whole people of a State or of any individual within it."

The court, however, is careful to add that this jurisdiction or power can only be exercised where it is not "surrendered or restrained by the Constitution of the United States."

See also *Lake View* v. *Rose Hill Cemetery Co.*, 70 Illinois, 191; *Commonwealth* v. *Alger*, 7 Cushing, 53, 84; *Railroad Company* v. *Husen*, 95 U. S. 465; *State* v. *Noyes*, 47 Maine, 189, 211; *Thorpe* v. *Rutland & Burlington Railroad*, 27 Vermont, 149; *In re Jacobs*, 98 N. Y. 98, 107; *Austin* v. *Murray*, 16 Pick. 121, 126; *Watertown* v. *Mayo*, 109 Mass. 315, 319; *Coe* v. *Schultz*, 47 Barb. 64; *In re Cheesebrough*, 78 N. Y. 232.

To be valid, legislation enacted for the purpose of promoting the public health, morals or welfare must be of such a character that it will affect and be for the benefit of the whole community, or at least the part of it which is brought into contact with the evils sought to be remedied. Such an enactment must not be so limited in its terms that it can and will, as in the present case, operate upon but one of many classes of employers and employés of the same general description, living and doing business under the same general conditions, even though the occupation in which they are engaged

may be injurious to themselves. In other words, it must relate and have reference to the result to the health and welfare of the community of the act or omission or the condition sought to be prevented or remedied, and not to the result of such act or omission to the author or person who is responsible for such condition or engaged in the dangerous or injurious occupation — that is, provided such person is *sui juris* and does not come within the class of persons (such as women, children, etc.) over which, as has been held in some of the States, the State has the right, to a limited extent, to exercise control for their own good and welfare, and thus indirectly for the welfare of the public.

It is, therefore, not within the power of the legislature to prevent persons who are *sui juris*, and otherwise perfectly competent to contract, from entering into employment and voluntarily making contracts in relation thereto merely because the employment in which they are to engage, although perfectly legal and proper in itself, may be considered by the legislature to be dangerous or injurious to the health of the employé; and if such right to contract cannot be prevented, it certainly cannot be restricted by the legislature to suit its own ideas of the ability of the employé to stand the physical and mental strain incident to the work. The character of the work to be performed, the number of hours a day in which the employé shall work, and the amount of compensation to be paid therefor are purely and necessarily personal matters between the parties to the contract, and are regulated by the terms thereof and by the will of the employer, influenced by considerations as to the requirements of his business and the condition of the market for his products, etc., and it is clear, as it seems to us, that so long as the employment does not interfere with the rights or health of others, the legislature cannot prevent it or regulate any of its terms.

If, for any reason, the condition of the market should become such that there was no sale or demand for the product of an iron mine, for example, and the owner, in consequence of this condition, should find that he was running his business at a loss, it would be ridiculous to say that he would

not have a perfect right to lay off some of his hands altogether, or to work them all half time, or arbitrarily to reduce the number of working hours of all to any extent he might think necessary or advisable; and if he could do that, we do not see why he could not, for the purpose of meeting an increased demand for the product of his mines and the competition from other sources, or if for any reason the condition of the market warranted it, increase the number of hours of his workmen to ten or any other number more than eight that they might be willing to work or contract with him for.

A case here directly in point is that of *In re Jacobs*, *supra*, where the court had under consideration a law of New York prohibiting the manufacture of cigars and the preparation of tobacco in any form in tenement houses, etc. In the opinion the court says: "To justify this law *it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manufacture may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health.*"

(*b.*) But however this may be, it is well settled that, when relating to business enterprises, the business or occupation at which such regulations are directed must be affected with a "public interest," and that the regulation must be for the protection or benefit of the public generally, as we have above contended, and not of an individual or segregated class of individuals under the circumstances we have mentioned.

This court, in the case of *Munn* v. *Illinois*, 94 U. S. 113, 126, defines the property that is subject to police regulation as follows: "Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created."

See also Cooley's Constitutional Limitations, 476, 720, (4th ed.); Tiedman's Limitation of Police Powers, §§ 178, 179.

In *United States* v. *Martin*, 94 U. S. 400, 403, in which this court was called upon to construe section 3738 of the Revised Statutes, providing that eight hours shall constitute a day's work for employés of the Government, it was held that said statute was "in the nature of a direction from a principal to his agent that eight hours is deemed to be a proper length of time for a day's labor, and that his contracts shall be based on that theory," but the court distinguishes between such a direction and the principle involved in the case at bar, as follows:

"The English statute books are full of assizes of bread and ale, commencing as early as the reign of Henry II., and regulations of labor, and many such are to be found in the statutes of the several States. It is stated by Adam Smith, as the law in his day, that in Sheffield no master cutler or weaver or hatter could have more than two apprentices at a time, and so lately as the 8th George III. an act, which remained unrepealed until 1825, was passed, prohibiting, under severe penalties, all master taylors in London, or within five miles of it, from giving, or their workmen from accepting, more than two shillings seven pence half penny a day, except in the case of general mourning." Smith's Wealth of Nations, 125, (6th Oxford edition of 1869.) "*A different theory is now almost universally adopted. Principals, so far as the law can give the power, are entitled to employ as many workmen, and at whatever degree of skill, and at whatever price they think fit, and, except in some special cases, as of children or orphans, the hours of labor and the price to be paid are left to the determination of the parties interested.* The statute of the United States does not interfere with this principle."

(*c*) From the foregoing authorities it would seem to result that an enactment of the legislature, made in pursuance of the police power of a State, or a police regulation, must be for the purpose of enforcing a duty and to punish acts or omissions which may be right or wrong according to the time, place or manner of doing them — that is, the exercise of what would otherwise be a right at a time, place or in a manner injurious to the public, is prohibited. A general criminal law is to

punish something wrong in itself, without regard to the time, place or manner of doing it, and of course such a law, whether enacted by original or delegated authority, is not a police regulation.

Therefore, the violation of the maxim *sic utere tuo ut alienum non lædas* covers every case in which the exercise of the police power would be valid or legitimate; and we think no case of a valid police regulation can be found which will not come under this maxim, and which does not refer to the limitation of the exercise of what, under proper circumstances, would be a right, and only becomes a wrong because of its excessive exercise or consequent injury to the health, welfare or morals of the public. Police regulations are, therefore, not enacted for the purpose of punishing wrongs, as such, but to enforce duties to the public in respect to matters which can only become wrongs *sub modo*. The right to destroy property to stay a conflagration and in case of war, etc., is also distinguishable, and is based upon the maxim *salus populi, suprema lex*. So of the right of eminent domain; though exercised for a public use, it is based on compensation. In a police regulation, there is only restraint for the public welfare.

If the constitution of the State requires the legislature to enact laws respecting the health of miners and others, the law to be valid must relate to the duty of the employer to his employés in the respects we have indicated, and must not interfere with the relation of the parties that rests solely on contract.

The present law has no relation to health or safety, either of the public or the persons affected, or, if so, only in a very remote degree; while its direct and principal effect is to interfere with the rights and liberties of the contracting parties.

It is apparent that if the police power extends to matters affecting contract relations and in which the public health, etc., is in no way concerned, there is practically no limit to its exercise; and all business conducted in the States, whether of a public, *quasi*-public or strictly private nature, could be made subject to such laws regulative thereof as the legislatures of

the respective States might see fit to adopt, and the personal liberty of the citizen, secured to him by the Constitution of the United States, would be entirely subverted.

(*d*) In this connection we desire to suggest that the constitutionality of this statute must be considered in the light of its effect upon the class of persons upon whom it operates, and upon the relation of the prohibition therein contained to the general public. When this is taken into consideration, it is apparent that, even if by any possibility it could fairly be said (as was assumed and said by the court below) that the enforcement of the provision contained in said measure could be conducive to the health or welfare of the employés enumerated therein, and in that respect is not unconstitutional, still it is so flagrantly violative of the rights and liberties of the citizens affected thereby — both of the employer and the employé — that it is brought in direct conflict with the Constitution of the United States, if not of the constitution of Utah, and cannot for that reason be allowed to stand.

Therefore, even if this act can fairly be assumed to have been a measure adopted by the legislature of Utah for the protection of the health or welfare of the class of persons affected thereby, it is, nevertheless, unconstitutional, because, when actually applied, it is found to be in contravention of the principles, and destructive of the rights and liberties of the citizen to which we have above pointed. To repeat the language of this court in *Boyd* v. *United States*, 116 U. S. 616, 635, varying it slightly to suit the circumstances of this case, we have no doubt that the legislature, in enacting this statute, "was actuated by perfectly proper motives," but we presume that "the vast accumulation of public business brought before it prevented it, on a first presentation, from noticing objections which have become developed by time and the practicable application of the objectionable law."

II. The statute in question abridges privileges and immunities of the plaintiff in error to which he is entitled as a citizen of the United States.

The plaintiff in error in this case is a native-born citizen of

the United States, and was at the time of his arrest, and now is, a citizen of the State of Utah, and as such was and is entitled to all the privileges and immunities of citizens of the United States as secured to them by the Constitution.

It seems to be settled by the decisions of this court, and of many others that have had this subject under consideration, that among the privileges and immunities secured to the citizen by the Fourteenth Amendment is the right "to pursue unmolested a lawful employment in a lawful manner." *Live Stock Association* v. *Crescent City Co.*, 1 Abb. U. S. 388, 389. Incidental to this there is, of course, the further right to enter into contracts relating to the character of the services to be performed, the amount of compensation to be paid and received therefor, and the period of time or the number of hours per day required to perform such labor.

The allowance to the employer of labor, and the workingman, of perfect freedom and liberty in this respect is absolutely and manifestly essential in this age of constant progress in business affairs and of great and increasing competition, to enable the employer and laborer, alike, to maintain life and to render any legitimate employment or business in which they may be engaged successful. Whatever may be the wisdom or necessity for enacting laws restrictive of the hours of labor of women, children or orphans, or the advisability of enacting such laws with reference to the employés in the various kinds of business enterprises that are held to be affected with a public interest, it is perfectly obvious, because of their great diversity and the character and necessities of the different kinds of private business enterprises, that it would be impossible to devise a law or regulation limiting the hours of employment of such employés that would operate with any degree of equality or with anything like justice upon the employers and employés in all private business enterprises, or even those of the same general class.

In the Constitution of the State of Utah itself, this distinction is recognized, and only the hours of work of employés of the "state, county and municipal governments" are attempted to be regulated thereby, the law here in question being claimed

to have been authorized and passed under the additional provision that "the legislature shall pass laws to provide for the health and safety of employés in factories, smelters and mines." The law, however, fails to make any such provision with reference to employés in factories.

Such laws as to public employés are regarded by the courts merely as directions from a principal to his agent, and as such are held to be competent; but, in the case of private employment or labor, as so aptly stated by this court, "principals, so far as the law can give the power, are entitled to employ as many men, and of whatever degree of skill, and at whatever price, they think fit, and except in some special cases, as of children and orphans, the hours of labor and the price to be paid are left to the determination of the parties interested." *United States* v. *Martin*, 94 U. S. 400.

Applying the principle last stated to the present case, it cannot be said that an act making it a misdemeanor for a private and independent mine operator to employ his workman more than eight hours a day, except in cases of emergency where life or property is in imminent danger, and subjecting him to fine and imprisonment in consequence of a violation of such provision, does not infringe or abridge the right of both the employer and laborer, to make contracts which persons and corporations in other lines of business may make, and that it does not thus abridge the privileges and immunities so secured to them as citizens of the United States.

We refer particularly to some of the authorities supporting our contention, from which it will be seen that, while the courts do not attempt specifically and in detail to enumerate and define all of these privileges and immunities, they are practically unanimous in holding that the right to pursue, in a lawful manner, a lawful vocation or trade, unmolested by laws in any way restrictive of that right, is a privilege that is protected and secured to the citizen by the Constitution of the United States. See *Ward* v. *Maryland*, 12 Wall. 418, 430; the concurring opinions of Justice Field and of Justice Bradley in *Butchers' Union Co.* v. *Crescent City*, 111 U. S., at pages 757 and 764 respectively; the dissenting opinion of Mr. Jus-

tice Field in the *Slaughterhouse cases*, 16 Wall. 97; *Ex parte Kubach*, 85 California, 274; *In re Eight Hour Law*, 39 Pac. Rep. 328; *In re House Bill No.* 203, 39 Pac. Rep. 431; *Leep* v. *Railway Co.*, 58 Arkansas, 407; *State* v. *Goodwill*, 33 West Virginia, 179; *Wally* v. *Kennedy*, 2 Yerg. 554; *People* v. *Otis*, 90 N. Y. 48; *Godcharles* v. *Wigeman*, 113 Penn. St. 431; *Commonwealth* v. *Perry*, 155 Mass. 117; *In re Jacobs*, 98 N. Y. 98; *Shaver* v. *Pennsylvania Company*, 71 Fed. Rep. 931; *People* v. *Marx*, 99 N. Y. 377; *People* v. *Gillson*, 109 N. Y. 389; *Millett* v. *People*, 117 Illinois, 294; *In re Tiburcio Parrott*, 1 Fed. Rep. 481; *Low* v. *Rees Printing Co.*, 41 Nebraska, 127; *Frorer* v. *People*, 141 Illinois, 171.

III. This statute also violates the provision of the Fourteenth Amendment that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

It is not necessary here to enter upon any extended analysis of the provisions of the statute in question for the purpose of showing how unequally it affects, and how it discriminates against, all citizens of the State of Utah who are engaged in the business of mining, smelting, etc. This has already been done in what we have said under the head of police power. What we have already said is sufficient to show that, under the operation of the law, all other persons in the State, no matter in what business or occupation they may be engaged, are left entirely at liberty to make whatever contracts they please in respect of the character of the work to be performed, the amount to be paid therefor, and the number of hours that shall constitute a day's work in all occupations which by the law of the land are properly the subjects of contract.

The act in the case at bar, in sections 1 and 2, says that eight hours shall constitute a day's work only for those who are employed in underground mines or workings, smelters and other institutions for the reduction or refining of ores, and, in section 3, says that "any person, body corporate, agent, manager or employer who shall violate any of the provisions of sections 1 and 2 of this act shall be deemed

guilty of a misdemeanor." This comparatively small class of people is in terms singled out by the legislature, made to bear this unjustifiable and unequal burden, and deprived of liberties and rights of property that are enjoyed by every other citizen in the State who is engaged in any of the vast number of employments not enumerated in the act, and which by the law of the land they are protected in the enjoyment of and have the right in the courts to enforce.

This free and unrestricted right to engage in any calling that is permitted under the law, and to make necessary and lawful contracts with reference thereto, is one of the fundamental and inalienable rights of the citizen, without which, of course, no condition of social, commercial or financial prosperity could exist in a community or State that is in any way dependent on other communities or States for an interchange of commodities or commerce, and "must, therefore, be free in this country to all alike upon the same conditions. The right to pursue 'such callings' without let or hinderance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright, for 'the property which every man has is his own labor, and, as it is the original foundation of all other property, so it is the most sacred and inviolable.'" Adam Smith's Wealth of Nations, Book 1, c. 10. See also *Brown* v. *Maryland*, 12 Wheat. 419, 439; *Boyd* v. *United States*, 116 U. S. 616, 635; *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 276; Mr. Webster's Argument in *Dartmouth College* v. *Woodward*, 4 Wheat. 517, 581, 582; *Millett* v. *People*, 117 Illinois, 294; *In re Jacobs*, 98 N. Y. 98, 105; *Bertholf* v. *O'Reilly*, 74 N. Y. 509, 515; *Low* v. *Rees Printing Co.*, 41 Nebraska, 127, 136; *Ritchie* v. *People*, 155 Illinois, 98; *Frorer* v. *People*, 141 Illinois, 171; *Braceville Coal Co.* v. *People*, 155 Illinois, 98; *State* v. *Loomis*, 115 Missouri, 307; *Austen* v. *Murray*, 16 Pick. 121.

An examination of the cases cited will show that in Colorado, Nebraska, California and Illinois, laws substantially similar to that in question in the case at bar have been held

unconstitutional and void by the highest courts of those States, and that in Massachusetts, New York, Pennsylvania, Illinois, Ohio, Missouri, West Virginia, Maryland, Arkansas, Texas, Vermont and many of the remaining States of the Union, laws so nearly analogous in principle to this statute that we deem them conclusive of the question, have likewise been so held.

Indeed, the three essential and indispensable elements of that perfectly free and unrestricted right of the citizen to contract with reference to all lawful pursuits in which he may desire to engage, which is guaranteed and protected by the Constitution of the United States, and to which we have above pointed, namely, the right of the employer and the employé to agree upon (1) the character of the services to be performed, (2) the amount to be paid for such service, and (3) the number of hours per day during which the service is to continue, are constantly grouped together in the authorities, and are manifestly so inseparably connected with each other that the destruction or abridgment of one is a destruction or abridgment of the whole of said right of contract; and, therefore, any decision holding that such destruction or abridgment of one of these elements is unconstitutional must necessarily apply to and control all questions as to the constitutionality of the others.

We have nowhere found a decision of any court upholding such a law as the one here involved, or any law analogous thereto, except in the cases we have enumerated, and which we contend are clearly distinguishable from the present case, namely, (*a*) cases where the law was enacted for the purpose of limiting the hours of employment of public employés, in which case this court has held that such a law is valid because merely in the nature of a direction from a principal to his agent, (*b*) cases where such laws are enacted with regard to employments affected with a public interest, and (*c*) in the case of statutes which, although limiting the hours of employment, are enacted for the protection of the health or safety of women, children, insane persons and the like, which last are generally, though not universally, regarded as a valid

exercise of the police power for the reasons we have already stated.

Relying, therefore, upon these authorities, and upon the indication of the opinion of this court above quoted from the case of the *United States* v. *Martin*, 94 U. S. 400, we respectfully submit that the judgment and order of the court below remanding plaintiff in error to the custody of the defendant, and denying his discharge from such custody, should be reversed.

Mr. Charles J. Pence for defendant in error. *Mr. John H. Murphy* was on his brief.

Mr. Justice Brown, after making the above statement, delivered the opinion of the court.

This case involves the constitutionality of an act of the legislature of Utah, of March 30, 1896, c. 72, entitled "An act regulating the hours of employment in underground mines and in smelters and ore reduction works." Session Laws of Utah, 1896, p. 219. The following are the material provisions:

"Sec. 1. The period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

"Sec. 2. The period of employment of workingmen in smelters and all other institutions for the reduction or refining of ores or metals shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

"Sec. 3. Any person, body corporate, agent, manager or employer, who shall violate any of the provisions of sections one and two of this act, shall be guilty of a misdemeanor."

The Supreme Court of Utah was of opinion that if authority in the legislature were needed for the enactment of the statute in question, it was found in that part of article 16 of the constitution of the State, which declared that "the legislature shall

pass laws to provide for the health and safety of employés in factories, smelters and mines." As the article deals exclusively with the rights of labor, it is here reproduced in full as exhibiting the authority under which the legislature acted, and as throwing light upon its intention in enacting the statute in question.

"SEC. 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the State.

"SEC. 2. The legislature shall provide by law for a board of labor, conciliation and arbitration which shall fairly represent the interests of both capital and labor. The board shall perform duties and receive compensation as prescribed by law.

"SEC. 3. The legislature shall prohibit:

"1. The employment of women, or of children under the age of fourteen years, in underground mines.

"2. The contracting of convict labor.

"3. The labor of convicts outside prison grounds, except on public works under the direct control of the State.

"4. The political and commercial control of employés.

"SEC. 4. The exchange of blacklists by railroad companies, or other corporations, associations or persons is prohibited.

"SEC. 5. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

"SEC. 6. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, county or municipal governments; and the legislature shall pass laws to provide for the health and safety of employés in factories, smelters and mines.

"SEC. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article."

The validity of the statute in question is, however, challenged upon the ground of an alleged violation of the Fourteenth Amendment to the Constitution of the United States, in that it abridges the privileges or immunities of citizens of the United States; deprives both the employer and the

laborer of his property without due process of law, and denies to them the equal protection of the laws. As the three questions of abridging their immunities, depriving them of their property, and denying them the protection of the laws, are so connected that the authorities upon each are, to a greater or less extent, pertinent to the others, they may properly be considered together.

Prior to the adoption of the Fourteenth Amendment there was a similar provision against deprivation of life, liberty or property without due process of law incorporated in the Fifth Amendment; but as the first eight amendments to the Constitution were obligatory only upon Congress, the decisions of this court under this amendment have but a partial application to the Fourteenth Amendment, which operates only upon the action of the several States. The Fourteenth Amendment, which was finally adopted July 28, 1868, largely expanded the power of the Federal courts and Congress, and for the first time authorized the former to declare invalid all laws and judicial decisions of the States abridging the rights of citizens or denying them the benefit of due process of law.

This amendment was first called to the attention of this court in 1872, in an attack upon the constitutionality of a law of the State of Louisiana, passed in 1869, vesting in a slaughter-house company therein named the sole and exclusive privilege of conducting and carrying on a live-stock landing and slaughter-house business, within certain limits specified in the act, and requiring all animals intended for sale and slaughter to be landed at their wharves or landing places. *Slaughter-house cases*, 16 Wall. 36. While the court in that case recognized the fact that the primary object of this amendment was to secure to the colored race, then recently emancipated, the full enjoyment of their freedom, the further fact that it was not restricted to that purpose was admitted both in the prevailing and dissenting opinions, and the validity of the act was sustained as a proper police regulation for the health and comfort of the people. A majority of the cases which have since arisen have turned not upon a denial to the colored race of rights therein secured to them, but upon alleged discrimina-

tions in matters entirely outside of the political relations of the parties aggrieved.

These cases may be divided, generally, into two classes: First, where a state legislature, or a state court, is alleged to have unjustly discriminated in favor of or against a particular individual or class of individuals, as distinguished from the rest of the community, or denied them the benefit of due process of law; second, where the legislature has changed its general system of jurisprudence by abolishing what had been previously considered necessary to the proper administration of justice, or the protection of the individual.

Among those of the first class, which, for the sake of brevity, may be termed unjust discriminations, are those wherein the colored race was alleged to have been denied the right of representation upon juries, *Strauder* v. *West Virginia*, 100 U. S. 303; *Virginia* v. *Rives*, 100 U. S. 313; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Bush* v. *Kentucky*, 107 U. S. 110; *Gibson* v. *Mississippi*, 162 U. S. 565; as well as those wherein the State was charged with oppressing and unduly discriminating against persons of the Chinese race, *Barbier* v. *Connolly*, 113 U. S. 27; *Soon Hing* v. *Crowley*, 113 U. S. 703; *Yick Wo* v. *Hopkins*, 118 U. S. 356, and *Chy Lung* v. *Freeman*, 92 U. S. 275; and those wherein it was sought under this amendment to enforce the right of women to suffrage and to admission to the learned professions, *Minor* v. *Happersett*, 21 Wall. 162; *Bradwell* v. *The State*, 16 Wall. 130.

To this class are also referable all those cases wherein the state courts were alleged to have denied to particular individuals the benefit of due process of law secured to them by the statutes of the State, *In re Converse*, 137 U. S. 624; *Arrowsmith* v. *Harmoning*, 118 U. S. 194, as well as that other large class, to be more specifically mentioned hereafter, wherein the state legislature was charged with having transcended its proper police power in assuming to legislate for the health or morals of the community.

Cases arising under the second class, wherein a State has chosen to change its methods of trial to meet a popular de-

mand for simpler and more expeditious forms of administering justice, are much less numerous, though of even greater importance, than the others. A reference to a few of these cases may not be inappropriate in this connection. Thus, in *Walker* v. *Sauvinet*, 92 U. S. 90, which was an action brought by a colored man against the keeper of a coffee-house in New Orleans for refusing him refreshments in violation of the constitution of the State securing to the colored race equal rights and privileges in such cases, a statute of the State provided that such cases should be tried by jury, if either party demanded it, but if the jury failed to agree the case should be submitted to the judge, who should decide the same. It was held that a trial by jury was not a privilege or immunity of citizenship which the States were forbidden to abridge, but the requirement of due process of law was met if the trial was had according to the settled course of judicial proceedings. "Due process of law," said Chief Justice Waite, "is process due according to the law of the land. This process in the States is regulated by the law of the State." This law was held not to be in conflict with the Constitution of the United States.

Similar rulings with regard to the necessity of a jury, or of a judicial trial in special proceedings, were made in *Kennard* v. *Louisiana*, 92 U. S. 480; *McMillen* v. *Anderson*, 95 U. S. 37; *Davidson* v. *New Orleans*, 96 U. S. 97; *Walston* v. *Nevin*, 128 U. S. 578; *Ex parte Wall*, 107 U. S. 265.

In *Hurtado* v. *California*, 110 U. S. 516, it was held that due process of law did not necessarily require an indictment by a grand jury in a prosecution by a State for murder. The constitution of California authorized prosecutions for felonies by information, after examination and commitment by a magistrate, without an indictment by a grand jury, in the discretion of the legislature. It was held that conviction upon such an information, followed by sentence of death, was not illegal under the Fourteenth Amendment.

In *Hayes* v. *Missouri*, 120 U. S. 68, it was held that a statute of a State which provided that, in capital cases, in cities having a population of over 100,000 inhabitants, the State

shall be allowed fifteen peremptory challenges to jurors, while elsewhere in the State it was allowed only eight peremptory challenges, did not deny to a person tried for murder, in a city containing over 100,000 inhabitants, the equal protection of the laws enjoined by the Fourteenth Amendment, and that there was no error in refusing to limit the State's peremptory challenges to eight.

In *Missouri Railway Co.* v. *Mackey*, 127 U. S. 205, it was said that a statute in Kansas abolishing the fellow-servant doctrine as applied to railway accidents, did not deny to railroads the equal protection of the laws, and was not in conflict with the Fourteenth Amendment. The same ruling was made with reference to statutes requiring railways to erect and maintain fences and cattle-guards, and make them liable in double the amount of damages claimed for the want of them.

In *Hallinger* v. *Davis*, 146 U. S. 314, it was held that a state statute conferring upon an accused person the right to waive a trial by jury and to elect to be tried by the court, and conferring power upon the court to try the accused in such case, was not a violation of the due process clause of the Fourteenth Amendment.

So, in *In re Kemmler*, 136 U. S. 436, it was held that the law providing for capital punishment by electricity was not repugnant to this amendment. And in *Duncan* v. *Missouri*, 152 U. S. 377, it was said that the prescribing of different modes of procedure and the abolition of courts, and the creation of new ones, leaving untouched all the substantial protections with which the existing law surrounds persons accused of crime, are not considered within the constitutional inhibition. See also *Medley, Petitioner*, 134 U. S. 160, and *Holden* v. *Minnesota*, 137 U. S. 483.

An examination of both these classes of cases under the Fourteenth Amendment will demonstrate that, in passing upon the validity of state legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the States methods of procedure, which at the time the Constitu-

tion was adopted were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. Even before the adoption of the Constitution, much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. The number of capital crimes, in this country at least, had been largely decreased. Trial by ordeal and by battle had never existed here, and had fallen into disuse in England. The earlier practice of the common law, which denied the benefit of witnesses to a person accused of felony, had been abolished by statute, though so far as it deprived him of the assistance of counsel and compulsory process for the attendance of his witnesses, it had not been changed in England. But to the credit of her American colonies, let it be said that so oppressive a doctrine had never obtained a foothold there.

The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the States homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the States grand

juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three fourths majority. This case does not call for an expression of opinion as to the wisdom of these changes, or their validity under the Fourteenth Amendment, although the substitution of prosecution by information in lieu of indictment was recognized as valid in *Hurtado* v. *California*, 110 U. S. 516. They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land.

Of course, it is impossible to forecast the character or extent of these changes, but in view of the fact that from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and, particularly, to the new relations between employers and employés, as they arise.

Similar views have been heretofore expressed by this court. Thus in the case of *Missouri* v. *Lewis*, 101 U. S. 22, 31, it was said by Mr. Justice Bradley: "We might go still further and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties, and the common law and its methods of procedure for the rest of the

State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the laws. . . . The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribes its own modes of judicial proceeding. If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause in the Fourteenth Amendment, there is no solid reason why there may not be such diversities in different parts of the same State."

The same subject was also elaborately discussed by Mr. Justice Matthews in delivering the opinion of this court in *Hurtado* v. *California*, 110 U. S. 516, 530: "This flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law. . . . The Constitution of the United States was ordained, it is true, by descendants of Englishmen, who inherited the traditions of English law and history; but it was made for an undefined and expanding future, and for a people gathered and to be gathered from many nations and of many tongues. And while we take just pride in the principles and institutions of common law, we are not to forget that in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown. Due process of law, in spite of the absolutism of continental governments, is not alien to that code which survived the Roman Empire as the foundation of modern civilization in Europe, and which has given us that fundamental maxim of distributive justice — *suum cuique tribuere.* There is nothing in Magna Charta, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we

are not to assume that the sources of its supply have been exhausted. On the contrary, we should expect that the new and various experiences of our own situation and system will mould and shape it into new and not less useful forms." We have seen no reason to doubt the soundness of these views. In the future growth of the nation, as heretofore, it is not impossible that Congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system, which represented the growth of generations of inhabitants, a jurisprudence with which they had had no previous acquaintance or sympathy.

We do not wish, however, to be understood as holding that this power is unlimited. While the people of each State may doubtless adopt such systems of laws as best conform to their own traditions and customs, the people of the entire country have laid down in the Constitution of the United States certain fundamental principles to which each member of the Union is bound to accede as a condition of its admission as a State. Thus, the United States are bound to guarantee to each State a republican form of government, and the tenth section of the first article contains certain other specified limitations upon the power of the several States, the object of which was to secure to Congress paramount authority with respect to matters of universal concern. In addition, the Fourteenth Amendment contains a sweeping provision forbidding the States from abridging the privileges and immunities of citizens of the United States, and denying them the benefit of due process or equal protection of the laws.

This court has never attempted to define with precision the words "due process of law," nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard,

as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defence. What shall constitute due process of law was perhaps as well stated by Mr. Justice Curtis in *Murray's Lessees* v. *Hoboken Land Co.*, 18 How. 272, 276, as anywhere. He said: "The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the Government, and cannot be so construed as to leave Congress free to make any process 'due process of law,' by its mere will. To what principles, then, are we to resort to ascertain whether this process, enacted by Congress, is due process? To this the answer must be twofold. We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country."

It was said by Mr. Justice Miller, in delivering the opinion of this court in *Davidson* v. *New Orleans*, 96 U. S. 97, that the words "law of the land," as used in Magna Charta, implied a conformity with the "ancient and customary laws of the English people," and that it was wiser to ascertain their intent and application by the "gradual process of judicial inclusion and exclusion as the cases presented for decision shall require, with the reasoning on which such decisions may be founded." Recognizing the difficulty in defining, with exactness, the phrase "due process of law," it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property, or right to property, shall be taken for the benefit of another, or for the benefit of the State, without compensation; and that

no one shall be condemned in his person or property without an opportunity of being heard in his own defence.

As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further, and say that, as property can only be legally acquired as between living persons by contract, a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid.

The latest utterance of this court upon this subject is contained in the case of *Allgeyer* v. *Louisiana*, 165 U. S. 578, 591, in which it was held that an act of Louisiana which prohibited individuals within the State from making contracts of insurance with corporations doing business in New York, was a violation of the Fourteenth Amendment. In delivering the opinion of the court, Mr. Justice Peckham remarked: "In the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property, must be embraced the right to make all proper contracts in relation thereto, and, although it may be conceded that this right to contract in relation to persons or property, or to do business within the jurisdiction of the State, may be regulated and sometimes prohibited, when the contracts or business conflict with the policy of the State as contained in its statutes, yet the power does not and cannot extend to prohibiting a citizen from making contracts of the nature involved in this case outside of the limits and jurisdiction of the State, and which are also to be performed outside of such jurisdiction."

This right of contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of employés as to demand

special precautions for their well-being and protection, or the safety of adjacent property. While this court has held, notably in the cases *Davidson* v. *New Orleans*, 96 U. S. 97, and *Yick Wo* v. *Hopkins*, 118 U. S. 356, that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety or morals, or the abatement of public nuisances, and a large discretion "is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests." *Lawton* v. *Steele*, 152 U. S. 133, 136.

The extent and limitations upon this power are admirably stated by Chief Justice Shaw in the following extract from his opinion in *Commonwealth* v. *Alger*, 7 Cush. 53, 84:

"We think it a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that its use may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth, as well that in the interior as that bordering on tide waters, is derived directly or indirectly from the Government, and held subject to those general regulations, which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment, as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient."

This power legitimately exercised can neither be limited by contract nor bartered away by legislation.

While this power is necessarily inherent in every form of government, it was, prior to the adoption of the Constitution, but sparingly used in this country. As we were then almost

purely an agricultural people, the occasion for any special protection of a particular class did not exist. Certain profitable employments, such as lotteries and the sale of intoxicating liquors, which were then considered to be legitimate, have since fallen under the ban of public opinion, and are now either altogether prohibited, or made subject to stringent police regulations. The power to do this has been repeatedly affirmed by this court. *Stone* v. *Mississippi*, 101 U. S. 814; *Douglas* v. *Kentucky*, 168 U. S. 488; *Giozza* v. *Tiernan*, 148 U. S. 657; *Kidd* v. *Pearson*, 128 U. S. 1; *Crowley* v. *Christensen*, 137 U. S. 86.

While the business of mining coal and manufacturing iron began in Pennsylvania as early as 1716, and in Virginia, North Carolina and Massachusetts even earlier than this, both mining and manufacturing were carried on in such a limited way and by such primitive methods that no special laws were considered necessary, prior to the adoption of the Constitution, for the protection of the operatives; but, in the vast proportions which these industries have since assumed, it has been found that they can no longer be carried on with due regard to the safety and health of those engaged in them, without special protection against the dangers necessarily incident to these employments. In consequence of this, laws have been enacted in most of the States designed to meet these exigencies and to secure the safety of persons peculiarly exposed to these dangers. Within this general category are ordinances providing for fire escapes for hotels, theatres, factories and other large buildings, a municipal inspection of boilers, and appliances designed to secure passengers upon railways and steamboats against the dangers necessarily incident to these methods of transportation. In States where manufacturing is carried on to a large extent, provision is made for the protection of dangerous machinery against accidental contact, for the cleanliness and ventilation of working rooms, for the guarding of well holes, stairways, elevator shafts and for the employment of sanitary appliances. In others, where mining is the principal industry, special provision is made for the shoring up of dangerous walls, for ventilation shafts, bore holes, escapement shafts, means of signalling the surface, for

the supply of fresh air and the elimination, as far as possible, of dangerous gases, for safe means of hoisting and lowering cages, for a limitation upon the number of persons permitted to enter a cage, that cages shall be covered, and that there shall be fences and gates around the top of shafts, besides other similar precautions. Digest of Stats. of Arkansas, 1149; California, Stats. March 16, 1872, c. 305; March 27, 1874, c. 498; March 14, 1881, c. 72; March 8, 1893, c. 74; Colorado, Mills' Anno. Stats. v. 3 Sup. c. 85; Gen. Stats. of Conn. 1888, secs. 2645 to 2647, 2263 to 2272; Rev. Stats. Illinois, 1889, p. 980; Thornton's Indiana Stats. 1897, c. 98, p. 1652; Gen. Stats. of Kansas, 1897, vol. 2, pp. 813 to 824; Kentucky Stats. (Barbour & Carroll) c. 88, p. 951; Mass. Acts May 21, 1891, c. 350; March 19, 1892, c. 83; April 25, 1892, c. 210; June 8, 1892, c. 352; June 11, 1892, c. 357; June 3, 1893, c. 406; June 22, 1894, c. 508; March 16, 1895, c. 129; Michigan (Howells' Anno. Stats.), secs. 9209*b* *et seq.*; Gen. Stats. of New Jersey, v. 2, pp. 1900 *et seq.*; Rev. Stat. Code and Gen. Laws of New York, vol. 2, p. 2069; Brightley's Purdon's Digest, Sup. Pennsylvania, 1885–1887, pp. 2241 *et seq.*

These statutes have been repeatedly enforced by the courts of the several States; their validity assumed, and, so far as we are informed, they have been uniformly held to be constitutional.

In *Daniels* v. *Hilgard*, 77 Illinois, 640, it was held that the legislature had power under the Constitution to establish reasonable police regulations for the operating of mines and collieries, and that an act providing for the health and safety of persons employed in coal mines, which required the owner or agent of every coal mine or colliery employing ten men or more, to make or cause to be made an accurate map or plan of the workings of such coal mine or colliery, was not unconstitutional; and that the question whether certain requirements are a part of a system of police regulations adopted to aid in the protection of life and health, was properly one of legislative determination, and that a court should not lightly interfere with such determination unless the legislature had manifestly transcended its province. See also *Litchfield Coal Co.* v. *Taylor*, 81 Illinois, 590.

In *Commonwealth* v. *Bonnell et al.*, 8 Phila. 534, a law,

providing for the ventilation of coal mines, for speaking tubes and the protection of cages, was held to be constitutional and subject to strict enforcement. *Commonwealth* v. *Conyngham*, 66 Penn. St. 99; *Durant* v. *Lexington Coal Mining Co.*, 97 Missouri, 62.

But if it be within the power of a legislature to adopt such means for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. It is as much for the interest of the State that the public health should be preserved as that life should be made secure. With this end in view quarantine laws have been enacted in most if not all of the States; insane asylums, public hospitals and institutions for the care and education of the blind established, and special measures taken for the exclusion of infected cattle, rags and decayed fruit. In other States laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the States, they have been generally upheld. Thus, in the case of *Commonwealth* v. *Hamilton Manufacturing Co.*, 120 Mass. 383, it was held that a statute prohibiting the employment of all persons under the age of eighteen, and of all women laboring in any manufacturing establishment more than sixty hours per week, violates no contract of the Commonwealth implied in the granting of a charter to a manufacturing company nor any right reserved under the Constitution to any individual citizen, and may be maintained as a health or police regulation.

Upon the principles above stated, we think the act in question may be sustained as a valid exercise of the police power of the State. The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction or refining of ores or metals. These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employés, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts.

While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of noxious gases, generated by the processes of refining or smelting.

We concur in the following observations of the Supreme Court of Utah in this connection in its opinion in No. 2:

"The conditions with respect to health of laborers in underground mines doubtless differ from those in which they labor in smelters and other reduction works on the surface. Unquestionably the atmosphere and other conditions in mines and reduction works differ. Poisonous gases, dust and impalpable substances arise and float in the air in stamp mills, smelters and other works in which ores containing metals, combined with arsenic or other poisonous elements or agencies, are treated, reduced and refined, and there can be no doubt that prolonged effort day after day, subject to such conditions and agencies, will produce morbid, noxious and often deadly effects in the human system. Some organisms and systems will resist and endure such conditions and effects longer than others. It may be said that labor in such conditions must be performed. Granting that, the period of labor each day should be of a reasonable length. Twelve hours per day would be less injurious than fourteen, ten than twelve and eight than ten. The legislature has named eight. Such a period was deemed reasonable. . . . The law in question is confined to the protection of that class of people engaged in labor in underground mines, and in smelters and other works wherein ores are reduced and refined. This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters, and other works for the reduction and refining of ores. Therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor

in other employments. Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government."

The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employés, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defence is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employés, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. "The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer."

We have no disposition to criticise the many authorities

which hold that state statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them, that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employés, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class. The distinction between these two different classes of enactments cannot be better stated than by a comparison of the views of this court found in the opinions in *Barbier* v. *Connolly*, 113 U. S. 27, and *Soon Hing* v. *Crowley*, 113 U. S. 703, with those later expressed in *Yick Wo* v. *Hopkins*, 118 U. S. 356.

We are of opinion that the act in question was a valid exercise of the police power of the State, and the judgments of the Supreme Court of Utah are, therefore,

Affirmed.

MR. JUSTICE BREWER and MR. JUSTICE PECKHAM dissented.